

# Exhibit 6

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE DISTRICT OF NEW JERSEY

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                  IN RE: VALSARTAN, LOSARTAN,  
4           AND IRBESARTAN PRODUCTS                   MDL No. 2875  
                  LIABILITY LITIGATION

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                  THIS DOCUMENT APPLIES TO ALL                   HON ROBERT B.  
6           CASES                   KUGLER

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8                                   MARCH 25, 2022

9                   CONFIDENTIAL INFORMATION - SUBJECT TO  
10                                   PROTECTIVE ORDER

11           Videotaped Deposition of LAUREN J. STIROH,  
12   Ph.D., commencing at 10:13 a.m., at the offices of  
13   Duane Morris, LLP, 1540 Broadway, New York, New  
14   York, before Jeffrey Benz, a Certified Realtime  
15   Reporter, Registered Merit Reporter and Notary  
16   Public within and for the State of New York.

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<p style="text-align: right;">Page 3</p> <p>1 APPEARANCES: (Ctd.)</p> <p>2</p> <p>3 CROWELL &amp; MORING LLP</p> <p>4 Attorneys for Defendant Cardinal Health, Inc.</p> <p>5 1001 Pennsylvania Avenue, NW</p> <p>6 Washington, D.C. 20004</p> <p>7 BY: DANIEL T. CAMPBELL, ESQ. (remote)</p> <p>8 202.624.2774</p> <p>9 dcampbell@crowell.com</p> <p>10 GREENBERG TRAURIG LLP</p> <p>11 Attorneys for Defendants Teva Pharmaceutical</p> <p>12 Industries, Ltd., Teva Pharmaceuticals SA, Inc.,</p> <p>13 Actavis LLC, and Actavis Pharma, Inc.</p> <p>14 77 South Wacker Drive, Suite 3100</p> <p>15 Chicago, Illinois 60601</p> <p>16 BY: TIFFANY M. ANDRAS, ESQ. (remote)</p> <p>17 GREGORY E. OSTFELD, ESQ. (remote)</p> <p>18 312.456.1065</p> <p>19 andrast@gtlaw.com</p> <p>20 ostfeldg@gtlaw.com</p> <p>21 HUSCH BLACKWELL LLP</p> <p>22 Attorneys for Defendant Express Scripts, Inc.</p> <p>23 190 Carondelet Plaza</p> <p>24 St. Louis, Missouri 63105</p> <p>BY: MATTHEW D. KNEPPER, ESQ. (remote)</p> <p>314.480.1848</p> <p>matt.knepper@huschblackwell.com</p> <p>PIETRAGALLO GORDON ALFANO BOSICK &amp; RASPANTI, LLP</p> <p>Attorneys for Defendant Mylan Pharmaceuticals, Inc.</p> <p>One Oxford Centre</p> <p>Pittsburgh, Pennsylvania 15219</p> <p>BY: JOHN B. ZAPPONE, ESQ. (remote)</p> <p>412.263.4362</p> <p>JBZ@Pietragallo.com</p>	<p style="text-align: right;">Page 5</p> <p>1 INDEX</p> <p>2 LAUREN J. STIROH, Ph.D.</p> <p>3 Examination by: Page</p> <p>4 MR. HONIK 7</p> <p>5 MS. KAPKE 228</p> <p>6 MR. HONIK 234</p> <p>7</p> <p>8 EXHIBITS</p> <p>9 Number Description Page</p> <p>10 Exhibit 1 Expert report of Lauren J. 9</p> <p>11 Stiroh, Ph.D.</p> <p>12 Exhibit 2 MTD Opinion 3: Warranty 124</p> <p>13 Claims</p> <p>14 Exhibit 3 Prohibited Acts, 21 USCA, 173</p> <p>15 Section 331</p> <p>16 Exhibit 4 Transcript of deposition 188</p> <p>17 of William J. Lambert</p> <p>18 Exhibit 5 Invoice from NERA Economic 197</p> <p>19 Consulting</p> <p>20 Exhibit 6 Summary of invoices 197</p> <p>21 Exhibit 7 Opinion in LaPoint v. 218</p> <p>22 AmerisourceBergen Corp.</p> <p>23 ***</p> <p>24 WITNESS DIRECTED NOT TO ANSWER:</p> <p>Page 211</p>

<p style="text-align: right;">Page 6</p> <p>1 THE VIDEOGRAPHER: We are now on the                  2 record. My name is Danny Ortega, and I am                  3 the legal videographer for Golkow                  4 Litigation Services.                  5 Today's date is March 25, 2022, and                  6 the time is 10:13 a.m.                  7 This video deposition is being held at                  8 1540 Broadway, New York, New York, in the                  9 matter of Valsartan, Losartan, and                  10 Irbesartan Products Liability Litigation,                  11 for the United States District Court,                  12 District of New Jersey.                  13 The deponent today is Dr. Lauren                  14 Stiroh.                  15 All counsel will be noted on the                  16 stenographic record.                  17 The court reporter today is Jeff Benz,                  18 who will now swear in the witness.                  19 LAUREN J. STIROH, Ph.D.,                  20 called as a witness, having been first                  21 duly sworn by Jeffrey Benz, a Notary                  22 Public within and for the State of New                  23 York, was examined and testified as                  24 follows:</p>	<p style="text-align: right;">Page 8</p> <p>1 many depositions before. I don't know how many                  2 you've done remotely since the pandemic. But                  3 there are a couple of housekeeping items that I                  4 think are worth mentioning so that we can end up                  5 with a good transcription and video of your                  6 testimony today.                  7 First, I'll be the principal                  8 questioner today on the plaintiffs' side, and as                  9 is always the case, it's my job to make myself                  10 clearly understood to you.                  11 If you don't understand a question or                  12 you haven't heard my question, if there's a                  13 technical problem, it's really important that                  14 you let me know so that I have an opportunity to                  15 restate it or clarify it for your benefit.                  16 Can we agree to that?                  17 A. Yes.                  18 Q. I'm sure you're aware that it's                  19 important that we not speak over one another,                  20 largely because the court reporter needs to be                  21 able to take down one speaker at a time.                  22 That's sometimes a challenge when it's                  23 conducted remote. I'll do my level best not to                  24 ask a new question as you're speaking, and if</p>
<p style="text-align: right;">Page 7</p> <p>1 EXAMINATION BY MR. HONIK:                  2 Q. Dr. Stiroh, good morning to you once                  3 again.                  4 A. Good morning.                  5 Q. As I introduced myself briefly to you                  6 earlier, my name is Ruben Honik. I am one of                  7 the plaintiffs' attorneys in this case. There                  8 are, as you might expect, a number of other                  9 plaintiffs' lawyers who are observing on Zoom,                  10 together with a great many defense attorneys.                  11 You're aware of all that?                  12 A. I am, yes.                  13 Q. And I know that you've given testimony                  14 under oath before, and I want to take a moment,                  15 in a moment, to highlight a couple things.                  16 But inasmuch as I'm in Philadelphia                  17 and you're in New York, who is in the room with                  18 you?                  19 A. The court reporter, the videography,                  20 and Seth Goldberg.                  21 Q. Okay. And I gather you're in the                  22 offices of Duane Morris in New York?                  23 A. I am.                  24 Q. I don't know -- I know you've given</p>	<p style="text-align: right;">Page 9</p> <p>1 you could, after you give your answer, maybe                  2 pause for a second in the event that                  3 Mr. Goldberg or one of the other defense lawyers                  4 needs to make an objection, that could be noted                  5 as well.                  6 Can you do that for me?                  7 A. Yes.                  8 Q. I'm going to be marking some exhibits,                  9 most if not all of which I hope are in paper                  10 form near you.                  11 Do you have, for example, your report                  12 with you?                  13 A. I do.                  14 Q. Well, for the benefit of the record,                  15 when the opportunity arises, we're going to mark                  16 that as Exhibit 1, Stiroh 1.                  17 (Expert report of Lauren J. Stiroh,                  18 Ph.D. was marked Stiroh Exhibit 1 for                  19 identification, as of this date.)                  20 Q. Is the copy that you have, does it                  21 contain the list of your reliance materials?                  22 A. It does.                  23 Q. And does it contain your CV as well?                  24 A. It does.</p>

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<p>1 Q. And you're satisfied that the copy 2 that we're going to mark Exhibit 1 is your true 3 and correct report that you issued, or is dated 4 January 12th of this year?</p> <p>5 A. Let me just flip through it briefly.</p> <p>6 THE WITNESS: I think that's going to 7 be Conti.</p> <p>8 Can you pass me?</p> <p>9 (Witness reviewing document.)</p> <p>10 A. It is.</p> <p>11 Q. Dr. Stiroh, I assume you've had an 12 opportunity to review your report or 13 refamiliarize yourself with it before today?</p> <p>14 A. Yes.</p> <p>15 Q. You've, doubtless, had time to prepare 16 with defense counsel who engaged you as well?</p> <p>17 A. I have.</p> <p>18 Q. And you feel ready this morning to 19 discuss the opinions that you express in that 20 report, to me?</p> <p>21 A. I do.</p> <p>22 Q. And in paragraph 5 of your report, 23 Exhibit 1, you describe your assignment. If you 24 could turn to that section.</p>	<p>1 MR. GOLDBERG: Let's see if it goes 2 away, because it's a little bit -- 3 you're -- you're also sort of coming in and 4 out a little bit.</p> <p>5 So why don't you go ahead and let's 6 see if it goes away.</p> <p>7 MR. HONIK: Seth, I must tell you, 8 you're very crisp, but Dr. Stiroh is a 9 little fuzzy, and there's a bit of a delay.</p> <p>10 I guess all we can do is just go 11 forward and see how it goes. Okay?</p> <p>12 MR. GOLDBERG: Yeah.</p> <p>13 Q. So let me reload the question, 14 Dr. Stiroh.</p> <p>15 We're looking -- excuse me -- at your 16 paragraph 5 together, which you've headed, 17 Assignment.</p> <p>18 And I'm simply trying to establish if 19 it isn't so, that in that paragraph, you 20 describe the things -- pardon me -- that you did 21 in discharging the assignment, as well as the 22 things you did not do.</p> <p>23 Is that fair?</p> <p>24 MR. GOLDBERG: Objection to form.</p>
Page 11	Page 13
<p>1 A. I have it in front of me.</p> <p>2 Q. And -- thank you.</p> <p>3 And specifically, as I read it, you 4 [indistinct], as well as the things that you did 5 not do; right?</p> <p>6 A. I'm sorry. I lost a little bit of 7 that question. If you don't mind saying it 8 again.</p> <p>9 Q. Not at all.</p> <p>10 As I read that paragraph entitled 11 Assignment, what I take it you did was to 12 enumerate the things --</p> <p>13 MR. GOLDBERG: Hang on a second, 14 Ruben.</p> <p>15 Q. -- that you didn't do; right?</p> <p>16 MR. GOLDBERG: Ruben, hang on one 17 second. We're getting a little bit of a 18 delay.</p> <p>19 MR. HONIK: Yes. I'm experiencing a 20 little bit of it here, but it's mostly the 21 image that Dr. Stiroh is a little bit 22 halting.</p> <p>23 Can we have the videographer address 24 that?</p>	<p>1 A. Generally, yes. Paragraph 5 of my 2 report describes the assignment, and then also 3 certain assumptions or areas of testimony where 4 I am not offering opinion.</p> <p>5 Q. And that's clear to me.</p> <p>6 If you turn to page 2 of your report, 7 we're still in paragraph 5, and if you were to 8 count down about six lines, do you see the 9 sentence that begins, I do not make an 10 assessment?</p> <p>11 A. I see that.</p> <p>12 Q. From that line forward, you enumerate 13 certain things that you did not do or assess; 14 correct?</p> <p>15 A. I'm not sure what you mean by I 16 enumerate them.</p> <p>17 I have a sentence that says, I do not 18 make an assessment regarding actual risk of 19 safety issues.</p> <p>20 And I have a sentence towards the end 21 that says, I also do not opine on the legal 22 issues, and goes on.</p> <p>23 Those are two areas where I am 24 clarifying that that is not an area for my</p>

<p style="text-align: right;">Page 14</p> <p>1 testimony.</p> <p>2 Q. That's right. And all I was really</p> <p>3 getting at is you attempt to list some things</p> <p>4 that you didn't do; correct?</p> <p>5 A. Yes.</p> <p>6 Q. I want to spend some time unpacking</p> <p>7 the language here so I understand the things</p> <p>8 that you didn't do before we talk about some of</p> <p>9 the things that you did do. Okay?</p> <p>10 A. Yes.</p> <p>11 Q. So the first sentence on page 2,</p> <p>12 within paragraph 5 that I would like to direct</p> <p>13 your attention to is the one that begins, I do</p> <p>14 not make an assessment regarding any actual risk</p> <p>15 of safety issues with regard to the subject</p> <p>16 VCDs.</p> <p>17 Do you see that clause?</p> <p>18 A. I do.</p> <p>19 Q. Can you tell me what that means?</p> <p>20 A. Yes. I am not a medical expert and I</p> <p>21 am not intending to offer opinions related to</p> <p>22 the safety risk, if any, of the products at</p> <p>23 issue on the patients who consumed them.</p> <p>24 Q. And in that regard, the sentence</p>	<p style="text-align: right;">Page 16</p> <p>1 or opinions.</p> <p>2 I take into account the possibility</p> <p>3 that the products were -- that the -- the</p> <p>4 impurities were included in the products at</p> <p>5 issue and have an understanding from materials</p> <p>6 that I have read in this case of the impact of</p> <p>7 that, but I am not offering testimony that the</p> <p>8 product -- the impurities were included in the</p> <p>9 products at issue or what implication that has</p> <p>10 for the risk profile.</p> <p>11 Q. Do you have an opinion whether NDMA or</p> <p>12 NDEA are, in fact, contaminants?</p> <p>13 A. I do not.</p> <p>14 Q. Do you have an opinion whether NDMA or</p> <p>15 NDEA are mutagenic?</p> <p>16 A. I do not.</p> <p>17 Q. Do you have an opinion whether NDMA or</p> <p>18 NDEA are carcinogenic?</p> <p>19 A. I do not.</p> <p>20 Q. Do you have an opinion whether NDMA or</p> <p>21 NDEA are genotoxic?</p> <p>22 A. I do not.</p> <p>23 Q. Can you explain to me why you read and</p> <p>24 cited as reliance material the expert report of</p>
<p style="text-align: right;">Page 15</p> <p>1 continues, And I offer no opinion on whether the</p> <p>2 presence of NDMA or NDEA impurities rendered any</p> <p>3 of the at-issue VCDs adulterated or misbranded</p> <p>4 during the relevant time period.</p> <p>5 Did I read that correctly?</p> <p>6 A. You did.</p> <p>7 Q. And does it mean that you have no</p> <p>8 opinion whether NDMA or NDEA rendered the VCDs</p> <p>9 in this case adulterated or misbranded?</p> <p>10 A. That is correct. I am not offering</p> <p>11 opinions on whether the presence, or if there</p> <p>12 is, of NDMA and NDEA rendered the products at</p> <p>13 issue misbranded or adulterated.</p> <p>14 I have reviewed Dr. Conti's report and</p> <p>15 have opinions with respect to her valuation of</p> <p>16 the products at issue where she does make those</p> <p>17 assumptions, and I take her assumptions that she</p> <p>18 has made and consider them in my opinions. I do</p> <p>19 not offer an opinion on adulteration or</p> <p>20 misbranding.</p> <p>21 Q. Let me unpack that a bit.</p> <p>22 Do you have an opinion whether these</p> <p>23 contaminants were present at all in these VCDs?</p> <p>24 A. That is not a subject of my testimony</p>	<p style="text-align: right;">Page 17</p> <p>1 Dr. Ron Najafi?</p> <p>2 A. I released certain expert reports of</p> <p>3 various individuals that offered reports in this</p> <p>4 case, to gain an understanding of some of the</p> <p>5 background issues and scope.</p> <p>6 Some of the materials that I have</p> <p>7 reviewed were to inform me on the broader</p> <p>8 background materials and information that is at</p> <p>9 issue in this case. It does not mean I am</p> <p>10 offering opinions on all of the materials that I</p> <p>11 read.</p> <p>12 I don't recall offhand if I have cited</p> <p>13 Dr. Najafi in my report other than in mentioning</p> <p>14 him in paragraph 6.</p> <p>15 But if and where I have cited him, it</p> <p>16 will indicate the reasons for why I have relied</p> <p>17 on that report.</p> <p>18 Q. Well, why don't you turn to Exhibit 2</p> <p>19 of your report, which we are marking in this</p> <p>20 deposition as Exhibit 1, which lists the expert</p> <p>21 reports that you relied upon.</p> <p>22 Do you see that list?</p> <p>23 A. Yes.</p> <p>24 Q. I take your point about obtaining some</p>



<p style="text-align: right;">Page 18</p> <p>1 background information even as to areas that you                  2 don't specifically offer an opinion.                  3 But as best as you can, what was it                  4 about Dr. Najafi's report that caused you to                  5 list it as a reliance material?                  6 A. I don't recall if there is specific                  7 information from that report that I cite in my                  8 background materials or later in my report. I                  9 could page through it and see.                  10 But as I sit here, I don't have a                  11 specific recollection what caused me to list                  12 that one in my materials considered.                  13 Q. Do you recall what kind of expert                  14 Dr. Najafi is?                  15 A. No, not by memory.                  16 Q. Can you tell me why you listed as                  17 reliance material the expert --                  18 MR. GOLDBERG: Ruben, that question                  19 cut out. You're going to have to ask it                  20 again.                  21 Q. Doctor, I'm asking you if you can tell                  22 me why you listed reliance upon the report of                  23 Dr. Panigraby.                  24 A. I would give you essentially the same</p>	<p style="text-align: right;">Page 20</p> <p>1 doing so; right?                  2 A. For the most part, that is correct.                  3 The materials that appear on Exhibit 2                  4 are materials that are cited throughout my                  5 report.                  6 It may be that there are certain                  7 expert reports that are cited only in paragraph                  8 6 and nowhere else.                  9 And the reason they would appear on my                  10 Exhibit 2 is that they appear in a footnote,                  11 even if the footnote is no more than to identify                  12 that report.                  13 Q. Do you know what the subject of                  14 Dr. Panigraby's report was?                  15 A. Not by memory, no.                  16 Q. Can you tell me why you listed the                  17 report of Dr. Etminan as reliance material for                  18 you?                  19 A. The same answer. I reviewed various                  20 expert reports.                  21 If they are cited in my footnotes,                  22 they are included on Exhibit 2.                  23 There are some that may be cited only                  24 in connection with paragraph 6 where I have</p>
<p style="text-align: right;">Page 19</p> <p>1 answer.                  2 I don't recall specifically any                  3 information from the report of Dr. Panigraby                  4 that I rely on for my opinions.                  5 If I cite him in the footnotes, then                  6 that would indicate the information that I am                  7 citing for that report.                  8 If I don't and it was simply a report                  9 that I reviewed in the context of getting                  10 broader information, I don't recall why that one                  11 in particular I chose to cite.                  12 Q. Did you prepare this list of reliance                  13 material yourself?                  14 A. I have a person on my team that                  15 prepares it for me.                  16 Q. Okay. You mean physically prepares                  17 the document? Is that what you mean?                  18 A. Yes.                  19 Q. Are you the one that's collected the                  20 expert reports that you listed as reliance                  21 material?                  22 A. Yes.                  23 Q. And so, I take it, since you were the                  24 one to list them, that you had a reason for</p>	<p style="text-align: right;">Page 21</p> <p>1 listed some of the expert reports.                  2 But if it is not cited elsewhere in                  3 the report, it is not the basis for any of the                  4 information or opinions that I am offering.                  5 Q. Would your answer be the same for                  6 Dr. David Chan, who is also listed as a report                  7 you relied upon?                  8 A. Yes.                  9 Q. That's a rebuttal report.                  10 Do you know what the subject of his                  11 report was?                  12 A. Not as I sit here without it in front                  13 of me, I don't.                  14 Q. Do you offer any opinions on cGMP?                  15 A. I do not.                  16 Q. Well -- but, Dr. Stiroh, is -- there                  17 you go.                  18 Dr. Stiroh, can you hear me?                  19 A. Okay. My computer has a message that                  20 says that my Internet connection is unstable.                  21 I can hear you now. I think that cut                  22 out in some -- at some point if you were asking                  23 a question, and so if you could ask it again.                  24 Q. I will. Thank you.</p>

<p style="text-align: right;">Page 22</p> <p>1 I asked you whether you offered any                  2 opinions in the area of cGMP and cGMP                  3 compliance.                  4 MR. GOLDBERG: Objection to form.                  5 A. I do not.                  6 Q. Can you tell me why you listed the                  7 expert report of Dr. -- or Mr. Quick in your                  8 reliance material, plaintiffs' cGMP expert?                  9 A. I reviewed the Quick report at the                  10 time that I received it, I think in part to see                  11 if there were opinions that related to economic                  12 losses.                  13 I don't recall anything specific in                  14 his report that I rely on, unless there might be                  15 a definition that I cite to him for.                  16 Q. Was it meaningful for your economic                  17 analysis to have an understanding of the                  18 allegations regarding the cGMP failures in this                  19 case?                  20 MR. GOLDBERG: Objection to form.                  21 Vague.                  22 A. I reviewed his report. I don't recall                  23 that there is anything specific that was                  24 meaningful for me and my analysis of economic</p>	<p style="text-align: right;">Page 24</p> <p>1 A. I don't think that is fair to say.                  2 As a general matter, damages experts                  3 will take certain allegations in the complaint                  4 at face value and consider, if they are true,                  5 what are the economic damages that arise from                  6 those actions, and also to consider as                  7 appropriate, if some of the allegations are true                  8 and others are not, whether damages can be                  9 assessed with information common to the class.                  10 I have considered the scope of                  11 allegations.                  12 I have considered how Dr. Conti refers                  13 to the alleged wrongdoing and taken that                  14 information into account when I formed my                  15 opinions.                  16 Q. In what way have you taken into                  17 account the allegations in this case as they                  18 pertain to cGMP failures?                  19 A. I am going to have to tell you from                  20 memory without looking at specific information.                  21 To the best of my recollection,                  22 Dr. Conti has a section in her report where she                  23 either opines or assumes that if there is a cGMP                  24 failure, that a drug is then misbranded or</p>
<p style="text-align: right;">Page 23</p> <p>1 loss damages.                  2 But I did at the time that I reviewed                  3 his report have a -- the understanding from                  4 reading it what the subject matter was that he                  5 was opining on.                  6 Q. Did you give any weight or                  7 consideration whatsoever to any of the opinions                  8 of either Mr. Quick or the defense experts in                  9 cGMP to your economic analysis?                  10 MR. GOLDBERG: Objection to form.                  11 Vague. Overbroad.                  12 A. I don't recall anything by memory                  13 where I am relying on or use as a basis an                  14 opinion of any cGMP experts in this case.                  15 I reviewed some pieces of information                  16 to understand the context of the case, but I                  17 don't think there is any of my opinions with                  18 respect to economic loss damages that rely on a                  19 cGMP expert's opinion.                  20 Q. So would it be fair to say that if                  21 there was pervasive cGMP failures on the part of                  22 one or more of the defendants in this case, that                  23 that did not impact any of your economic                  24 analysis?</p>	<p style="text-align: right;">Page 25</p> <p>1 adulterated, and in her framework, that means                  2 that for her, that the drug is economically                  3 worthless.                  4 I consider that chain of reasoning and                  5 respond to it in my report.                  6 Q. What consideration do you give it --                  7 the fact in your framework?                  8 MR. GOLDBERG: Can you ask that again,                  9 Ruben? You broke up.                  10 Q. Yeah. You described understanding                  11 that Dr. Conti in her report discusses and gives                  12 some specific weight and consideration to the                  13 fact of cGMP failures.                  14 That's what you've told me; right?                  15 A. I don't think it is what I told you.                  16 I am not opining that there is a fact                  17 of cGMP failures, and I don't think that                  18 Dr. Conti did, unless I have misread her report.                  19 I understand that she has taken it as                  20 an assumption that there were cGMP failures, and                  21 I consider the implication of that assumption                  22 for her assessment of economic loss damages and                  23 how I think economic loss damages would be                  24 properly calculated if there are any in this</p>



<p style="text-align: right;">Page 26</p> <p>1 matter.</p> <p>2 Q. Did you assume that there were cGMP</p> <p>3 failures for your analysis?</p> <p>4 A. I don't have a specific assumption</p> <p>5 that there were cGMP failures.</p> <p>6 I take under consideration the</p> <p>7 possibility that the drugs would be considered</p> <p>8 misbranded or adulterated and consider how that</p> <p>9 impacts Dr. Conti's opinions.</p> <p>10 I understand that chain of reasoning</p> <p>11 in her report starts from an assumption of cGMP</p> <p>12 failures.</p> <p>13 I can't think as I sit here whether</p> <p>14 there are specific aspects of my opinions that</p> <p>15 depend on me making that assumption.</p> <p>16 Q. Well, so, before we move on from this</p> <p>17 idea, I am understanding with some clarity that</p> <p>18 you understood how Dr. Conti treated that in her</p> <p>19 framework.</p> <p>20 I'm simply trying to understand what</p> <p>21 you did with either the compliance or</p> <p>22 noncompliance of cGMP.</p> <p>23 How does that fit into your framework</p> <p>24 or analysis?</p>	<p style="text-align: right;">Page 28</p> <p>1 economic damages that flow from the conduct that</p> <p>2 is ultimately deemed to be wrongful.</p> <p>3 Q. Do you have analysis anywhere in your</p> <p>4 report that assumes liability and then</p> <p>5 determines if damages are calculable?</p> <p>6 MR. GOLDBERG: You're going to have to</p> <p>7 ask that again, Ruben. You broke up again.</p> <p>8 MR. HONIK: Did the court reporter get</p> <p>9 it?</p> <p>10 THE COURT REPORTER: I did not.</p> <p>11 Q. Is there any part of your report that</p> <p>12 assumes liability, as you've just described to</p> <p>13 me that damages experts sometimes do, in order</p> <p>14 to address damages?</p> <p>15 Is that something that you did?</p> <p>16 A. Yes.</p> <p>17 Q. And we'll certainly get more deeply</p> <p>18 into it.</p> <p>19 But where would I find that in your</p> <p>20 report, that is, your assumption of liability as</p> <p>21 a foundation for discussing damages? Where is</p> <p>22 that?</p> <p>23 A. There is nowhere in my report where I</p> <p>24 assume no liability.</p>
<p style="text-align: right;">Page 27</p> <p>1 MR. GOLDBERG: Objection to form.</p> <p>2 Vague. Compound.</p> <p>3 A. I do not offer opinions on whether</p> <p>4 there was compliance or noncompliance with cGMP.</p> <p>5 I offer opinions with respect to</p> <p>6 whether damages can be calculated with</p> <p>7 information common to the class and whether</p> <p>8 Dr. Conti has put forward a valid economic model</p> <p>9 to assess damages, if any, with information</p> <p>10 common to the class.</p> <p>11 Q. Is the fact of compliance with cGMP</p> <p>12 relevant to an economic analysis of damages in</p> <p>13 this case?</p> <p>14 A. For the analysis itself, whether there</p> <p>15 is compliance or noncompliance, may not be</p> <p>16 relevant in the following sense: That if there</p> <p>17 is ultimately no finding of wrongdoing, my</p> <p>18 understanding is that there is no damage,</p> <p>19 regardless of assumptions made by economists.</p> <p>20 At the stage where I as a damages</p> <p>21 expert am typically involved in a matter, there</p> <p>22 has not been a finding of wrongdoing in many</p> <p>23 cases, and so we would then consider, if there</p> <p>24 is a finding of wrongdoing, what are the</p>	<p style="text-align: right;">Page 29</p> <p>1 So in that sense, the entirety of my</p> <p>2 report assumes that liability will be found for</p> <p>3 some conduct.</p> <p>4 If liability is found for no conduct,</p> <p>5 I think my report generally becomes irrelevant.</p> <p>6 Q. Right. But my question is -- is</p> <p>7 specific.</p> <p>8 Can you point to any language in your</p> <p>9 report that I or any reader could find that says</p> <p>10 you've assumed liability on any basis in order</p> <p>11 to discuss or analyze economic damages?</p> <p>12 MR. GOLDBERG: Objection to form.</p> <p>13 Asked and answered.</p> <p>14 A. I don't recall having written that</p> <p>15 into my report.</p> <p>16 It is typically a standard</p> <p>17 going-forward assumption for a damages economist</p> <p>18 to consider the impact of certain acts where</p> <p>19 liability for those acts may be determined at a</p> <p>20 later stage by a court.</p> <p>21 Q. Okay. And I'm familiar with that</p> <p>22 construct as well.</p> <p>23 Is there someplace in your report</p> <p>24 where I could see your discussion of the basis</p>

<p style="text-align: right;">Page 30</p> <p>1 for that liability; in other words, whether the                  2 basis lies in warranty or statutory --                  3 the -- for economic analysis?                  4 Where would I find it in your report?                  5 MR. GOLDBERG: You're going to have to                  6 ask that again, Ruben.                  7 MR. HONIK: Jeff, did you hear it?                  8 THE COURT REPORTER: No. Part of it                  9 cut out.                  10 MR. HONIK: Okay.                  11 Q. The question I'm trying to get at,                  12 Dr. Stiroh, is this: Having read the --                  13 MR. GOLDBERG: Ruben, hang on for one                  14 second.                  15 Q. -- complaint and other --                  16 MR. GOLDBERG: Can we go off the                  17 record for one second? I do have an idea.                  18 MR. HONIK: Yeah, let's do that.                  19 THE VIDEOGRAPHER: The time right now                  20 is 10:42 a.m. We are off the record.                  21 (Discussion off the record.)                  22 THE VIDEOGRAPHER: The time now is                  23 11:08 a.m. We are back on the record.                  24 Q. Dr. Stiroh, thank you for your</p>	<p style="text-align: right;">Page 32</p> <p>1 liability on the basis of a warranty claim, does                  2 that impact your analysis differently than                  3 assuming, for example, that liability is                  4 predicated on negligence?                  5 MR. GOLDBERG: Objection to form.                  6 Ambiguous. Calls for a legal conclusion.                  7 A. It does not affect my analysis in any                  8 way as I sit here.                  9 To the extent that the legal framework                  10 has different ways of considering economic                  11 damages, that I would look for guidance from                  12 counsel as to whether there are different                  13 measures of economic damages depending on the                  14 bases for liability, if any, is found.                  15 Q. We'll talk about the basis for                  16 measuring or the formulas for measuring.                  17 But you agree those are legal                  18 determinants; correct?                  19 MR. GOLDBERG: Objection to form.                  20 Ambiguous.                  21 A. It is my understanding that it --                  22 there would be a legal determination as to                  23 whether there is a basis for damages, yes.                  24 Q. And before moving on, in connection</p>
<p style="text-align: right;">Page 31</p> <p>1 considerable patience. I am sorry it's taking                  2 so long. And let's see how it goes. Okay?                  3 A. Yes.                  4 Q. I want to try to pick up where I think                  5 we left off, and that is, we were discussing --                  6 I was attempting to understand what assumptions                  7 you made around the liability questions.                  8 You -- you have already described                  9 yourself as a damage expert; correct?                  10 A. Yes.                  11 Q. And do you agree generally that the                  12 basis for liability impacts damage analysis?                  13 MR. GOLDBERG: Objection to form.                  14 Vague.                  15 A. I don't agree generally.                  16 As a matter of economics, it may be                  17 that it is the fact of liability on a particular                  18 claim that then generates damages flowing from                  19 that claim.                  20 But as a legal basis, the basis for                  21 liability I don't think I can tell you matters                  22 without some specificity as to what it is that                  23 you mean.                  24 Q. So, for example, if you assume</p>	<p style="text-align: right;">Page 33</p> <p>1 with your analysis in your report, did you make                  2 one or more assumptions about the basis for                  3 liability in order to arrive at your economic                  4 damages opinions?                  5 A. I don't recall having done so.                  6 I have considered the possibility that                  7 there would be a finding that the products at                  8 issue contain impurities.                  9 And I have considered the assumptions                  10 that Dr. Conti made and followed with my                  11 economic analyses of damages in her framework                  12 and the framework I put forward in my report.                  13 Q. In the many cases in which you've been                  14 asked to serve as an expert consultant in                  15 litigation matters, you frequently need to make                  16 assumptions, do you not, in order to answer                  17 certain economic questions; correct?                  18 A. I agree.                  19 Q. And so, for example, I know one of                  20 your particular -- I'll refer to it as a                  21 subspecialty area is evaluating damages in the                  22 antitrust context; correct?                  23 A. I'm sorry. What was the question?                  24 Q. The question is: You have</p>

<p style="text-align: right;">Page 34</p> <p>1 considerable expertise in analyzing economic                  2 damages in the antitrust area; correct?                  3 A. Yes.                  4 Q. And I gather one of the things, for                  5 example, by way of illustration, that you do                  6 there is that you either yourself or you                  7 evaluate others' assessments of a but-for world                  8 with an actual world in terms of economic                  9 consequences; correct?                  10 MR. GOLDBERG: Objection to form.                  11 A. That is a damage model that I am                  12 familiar with, yes.                  13 Q. That's right.                  14 And in order to actions such models,                  15 you have to make certain assumptions in order to                  16 arrive at a reasonable understanding of what the                  17 models propose; correct?                  18 A. Yes.                  19 Q. So you use things, for example, like                  20 regression modeling; correct?                  21 MR. GOLDBERG: Objection to form.                  22 Vague.                  23 A. I have used regressions in analyzing                  24 things like economic damages or relevant</p>	<p style="text-align: right;">Page 36</p> <p>1 Q. Understood. Did you assume any of the                  2 facts in the master complaints here? Did you                  3 assume those allegations to be true?                  4 A. I believe where appropriate I have.                  5 I have not assumed that facts are not                  6 true, as far as I can recall.                  7 I have considered the economic                  8 implications if there are impurities in the                  9 drugs at issue.                  10 There may be certain scenarios that I                  11 consider that are different from what plaintiff                  12 put forward, but that, to my mind, is different                  13 from assuming the facts away.                  14 Q. What allegations of plaintiffs'                  15 economic loss complaint did you assume to be                  16 true?                  17 A. I understand that there is an                  18 allegation that NDMA and NDEA impurities were                  19 added in the manufacturing process for certain                  20 of the Valsartan-containing drugs at issue.                  21 I take -- I understand that there is                  22 the allegation that then the FDA would not have                  23 approved drugs with those impurities in them.                  24 I take as given the market facts as I</p>
<p style="text-align: right;">Page 35</p> <p>1 markets, as they are relevant to work that I                  2 have done.                  3 Q. Have you had occasion to do economic                  4 or damage analysis based on assumptions or                  5 representations about legal rulings, or based on                  6 legal rulings?                  7 A. Yes.                  8 Q. And, in fact, for example, in the                  9 antitrust area, have you had occasions where                  10 you've been asked to assume or you've been told                  11 that courts have determined that there's                  12 antitrust culpability and antitrust impact, and                  13 then the question becomes how to assess the                  14 damages related thereto? Have you done that?                  15 A. I have not in my experience in                  16 antitrust matter.                  17 Whether there's antitrust impact is a                  18 question for economic testimony, and it's a                  19 question on which I have opined.                  20 In the antitrust scenario, it would be                  21 common for a damage expert to assume the facts                  22 in a complaint with respect to conduct are true,                  23 but not to assume impact of that conduct without                  24 analyzing it in a framework of economics.</p>	<p style="text-align: right;">Page 37</p> <p>1 understand them that the drugs at issue were                  2 withdrawn in 2018 and '19.                  3 I take as my understanding that there                  4 is a dispute over whether the impurities at                  5 issue enhanced any risk that a patient would                  6 face, and I consider that aspect of the dispute,                  7 taking into account both the possibility that                  8 the impurities at issue would have increased                  9 risks to patients and the possibility that the                  10 impurities at issue would not have increased                  11 risk to patients.                  12 And I explain in my report how that                  13 variation flows through into assessing economic                  14 damages.                  15 Q. What do you mean when you say that you                  16 assumed the FDA would not have approved the                  17 drugs, in your response?                  18 A. I consider the framework that I                  19 understand Dr. Conti to have put forward where                  20 she says there would not have been a supply of                  21 the products at issue.                  22 To the best of my recollection, I                  23 think that she is assuming that from 2012                  24 forward, whereas the market facts as I</p>

<p style="text-align: right;">Page 38</p> <p>1 understand them is that the products at issue                  2 were not available in 2018 and 2019.                  3 Q. Where in your report would it reveal                  4 to me or any reader that you assumed the fact                  5 you just described?                  6 A. There is a section in my report where                  7 I discuss what consumers would have done in the                  8 absence of the availability of the VCDs at                  9 issue.                  10 That is consistent with the framework                  11 that Dr. Conti has put forward where she assumes                  12 that there would not be supply of the products                  13 at issue.                  14 Q. Where is that analysis in your report?                  15 A. It is included at various places in my                  16 report as appropriate, and specifically in                  17 section Roman Numeral IV of my report, the                  18 discussion begins on paragraph 26.                  19 I have discussed various aspects, I                  20 think, that are aligned with that theory, what                  21 if the drugs were not available at other places                  22 as well. But at least Roman Section IV.                  23 Q. So I want to make sure that you and I                  24 are on the same page.</p>	<p style="text-align: right;">Page 40</p> <p>1 III where I also consider what patients would                  2 have done in the absence of available supply for                  3 VCDs at issue.                  4 But the part that I recall discussing                  5 it more explicitly is Roman IV.                  6 Q. Would section Roman IV of your report,                  7 in addition to the other sections to which                  8 you've cited me, reflect your analysis of                  9 potential damages in the absence of a supply                  10 curve for VCDs?                  11 A. My analysis in section IV reflects a                  12 consideration of the financial losses in the                  13 absence of supply for the VCDs at issue.                  14 Q. Do you assume in your analysis found                  15 in section IV that there is an absence of a                  16 supply curve for VCDs?                  17 A. I do not assume an absence of a supply                  18 curve for VCDs.                  19 I understand that one of the                  20 alternatives available to consumers in the                  21 absence of the at-issue VCDs would have been the                  22 brand drug and I think some supply available                  23 from other manufacturers that are not                  24 defendants.</p>
<p style="text-align: right;">Page 39</p> <p>1 My Roman IV is headed, Plaintiffs'                  2 payments for VCDs and VCD substitutes would                  3 likely have been equal or higher.                  4 Is that the section you're directing                  5 me to?                  6 Because that comports with paragraph                  7 50, 5-0, in my report.                  8 A. Yes. Did I say a different number? I                  9 meant to say page 26, paragraph 50.                  10 Q. Got it.                  11 Are there any other discrete places in                  12 your report that you believe discusses assuming                  13 that the FDA would not have approved these                  14 drugs, and, therefore, they wouldn't have been                  15 in the marketplace?                  16 Where else do you discuss it?                  17 MR. GOLDBERG: Objection to form.                  18 Mischaracterizes the testimony.                  19 A. I think all of Roman IV, which goes                  20 over to a chart that is on page 34.                  21 But there may be other places,                  22 certainly in the summary of opinions that's at                  23 the beginning of my report.                  24 And then there may be parts of Roman</p>	<p style="text-align: right;">Page 41</p> <p>1 Q. Is there any part of your analysis in                  2 which you assume an absence of a supply curve                  3 for contaminated VCDs?                  4 A. In my section Roman IV, I consider                  5 what the economic implications are if there had                  6 not been supply of contaminated VCDs.                  7 Q. And was your conclusion in that                  8 section, generally speaking, that patients would                  9 go to alternative drug therapy?                  10 A. Did you ask me if that was my                  11 conclusion?                  12 Q. Yes.                  13 A. It is not a conclusion that I have.                  14 It is a consideration that I have.                  15 My understanding is that patients that                  16 are currently on VCDs or blood pressure                  17 medication, if they could not take their current                  18 medication, would for the most part be required                  19 to switch to something else.                  20 I have seen in the data that there are                  21 some patients that appear to have switched to                  22 things like Vitamin C.                  23 So I don't assume that everybody needs                  24 to switch, but it is my understanding that the</p>

<p style="text-align: right;">Page 42</p> <p>1 majority of consumers would need to take a 2 medication to manage their blood pressure. It 3 is not necessary to my conclusions that all of 4 them do. 5 Q. Are you aware that "adulterated" is a 6 term of art with a specific definition under the 7 Federal Food, Drug and Cosmetic Act? 8 A. My understanding is that it is. 9 Q. And did you list the relevant section 10 that defines "adulterated" among your reliance 11 materials? 12 A. I don't think that I did. I did not 13 rely on an FDA statement of adulteration. I 14 have considered what Dr. Conti considered in her 15 report, and my report responds to her opinions. 16 Q. Well, do you acknowledge that 17 Dr. Conti merely applied the definition of 18 "adulterated" as the FDA in the Federal Food, 19 Drug and Cosmetic Act sets it out? 20 A. As I recall from her report, I believe 21 that is what she sets out to do. 22 I did not go to check whether she had 23 cited it correctly or interpreted it correctly. 24 I take the words in her report as given and</p>	<p style="text-align: right;">Page 44</p> <p>1 mean? 2 A. As appreciated by that consumer and/or 3 their doctor. 4 Q. Okay. You listed in your reliance 5 material at Exhibit 2, which is now part of your 6 report at Exhibit 1, four court filings. 7 Do you see that? 8 A. Yes. 9 Q. There are roughly 2,000 court filings 10 in this MDL. 11 Why did you pick these four? 12 A. The four that are cited here are the 13 ones that I cited in my report for -- as the 14 basis for certain statements or quotes that I 15 have taken from those court filings. 16 Q. Yeah. That strikes me as a tautology. 17 They're there because you cite them in your 18 report. 19 My question is, Why did you select 20 these four? 21 How are they relevant to your analysis 22 and opinions? 23 A. We can see from where I have cited 24 them how they fit in.</p>
<p style="text-align: right;">Page 43</p> <p>1 consider the implications for economic loss 2 damages. 3 Q. What are the implications, in your 4 judgment, for economic loss damages that we may 5 be dealing with and, in fact, are dealing with 6 adulterated drugs? 7 MR. GOLDBERG: Objection to form. 8 Assumes facts not in evidence. Ambiguous. 9 A. As an economic matter, the economic 10 losses that relate to the difference between the 11 price paid and the value received depend on the 12 impact on the value received by consumers of 13 VCDs from having consumed a product that has an 14 impurity in it that caused it to be deemed 15 adulterated or misbranded. 16 As I explained in my report, as a 17 matter of economics, that diminution of value, 18 if any, depends on what I think I have called 19 the degree of adulteration. By that, I mean 20 depends on how the risk profile of the product 21 may change for any consumer consuming the 22 product. 23 Q. And would that be the risk profile as 24 appreciated by that consumer? Is that what you</p>	<p style="text-align: right;">Page 45</p> <p>1 The definition of the class -- of the 2 purported class, the identities of defendants, 3 the identities of the named plaintiffs all come 4 from the complaint. And so that is cited. 5 There are certain background facts 6 where I understand there may be a dispute, but 7 from my -- for my purposes, I am using a 8 particular definition, and frequently I will 9 cite a definition that comes from the complaint 10 or the opposing party, if -- if relevant, so 11 that there is not dispute over that fact, and, 12 instead, I focus on the economic analyses. 13 Q. Were these four court filings provided 14 to you by counsel and suggested as material you 15 should rely on, or did you have a larger pool of 16 documents from which you selected these four on 17 your basis? 18 A. I have a larger pool of documents and 19 selected these four as having information that I 20 wanted to put either in the background of my 21 report or to define what has been put forward as 22 the class, the dates of the class, the 23 identities of the parties, things like that. 24 Q. I note that you didn't rely on any</p>



<p style="text-align: right;">Page 46</p> <p>1 opinions or writings of the court to shed light                  2 on either the theories or the appropriate                  3 measure of damages.                  4 Why didn't you do that?                  5 A. I have been asked to assess from the                  6 standpoint of an economist what -- whether                  7 economic loss damages in the -- for the class                  8 members as described in the motion for class                  9 certification can be assessed with information                  10 methods common to the class.                  11 I did that based on my training as an                  12 economist, and have explained at certain places                  13 in my report where I understand there to be a                  14 correspondence of legal theories and economic                  15 theories.                  16 But for the most part, my report is an                  17 independent economic analysis of economic loss                  18 damages.                  19 Q. Yeah, I understand all that.                  20 But my question was very specific, and                  21 that was, why didn't you look at any of the                  22 writings of the court in the form of opinions to                  23 shed light on any issues that may impact that                  24 economic analysis and the ability to certify a</p>	<p style="text-align: right;">Page 48</p> <p>1 Q. Were you told not to assume that the                  2 court's opinions are reliable?                  3 A. I was not.                  4 MR. GOLDBERG: Objection. Note my                  5 objection to that question as ambiguous.                  6 Q. What opinions of the court did you                  7 read that you failed to list in your reliance                  8 materials list?                  9 A. I did not fail to list any opinions in                  10 my reliance list, because I did not rely on                  11 opinions for the court.                  12 I recall reviewing an opinion of the                  13 court. I believe there are more than one. I                  14 can't recall them for you with certainty as I                  15 sit here without them in front of me.                  16 I think Dr. Conti refers to them                  17 either in her report or in her deposition, and                  18 it would be those ones that are referenced that                  19 I have reviewed.                  20 Q. So these opinions that you did review,                  21 it sounds like you reviewed them after you wrote                  22 your report; correct?                  23 A. I have reviewed them after I wrote my                  24 report. To the best of my recollection, I have</p>
<p style="text-align: right;">Page 47</p> <p>1 class for damages?                  2 MR. GOLDBERG: Objection to form.                  3 Asked and answered.                  4 A. In the course of my work on this case,                  5 I have reviewed other legal documents, including                  6 opinions of the court. For the purposes of my                  7 opinions that relate to economic losses, and                  8 whether there are economic losses that can be                  9 calculated on a class-wide basis, I rely on my                  10 training and experience as an economist and                  11 review the types of information that are                  12 available in this case that economists typically                  13 rely upon.                  14 Q. So you did review opinions in the                  15 court, you just didn't list them as reliance                  16 materials; right?                  17 A. I reviewed opinions of the court. I                  18 did not rely on an opinion of the court to reach                  19 my independent conclusions as an economist.                  20 Q. When you say "independent," what do                  21 you mean by that?                  22 A. I mean that I have not been asked to                  23 assume somebody else's opinion is true. I have                  24 been asked to reach my own opinions.</p>	<p style="text-align: right;">Page 49</p> <p>1 seen the opinions of the court prior to writing                  2 my report as well.                  3 Q. What opinions of the court did you                  4 review prior to the preparation and tendering of                  5 your report that would not be listed in your                  6 reliance materials list?                  7 A. I don't recall by title opinions of                  8 the court that I reviewed prior to my report.                  9 There are no opinions of the court                  10 listed in my reliance materials because I did                  11 not rely on opinions of the court in reaching my                  12 economic opinions.                  13 Q. Right. I understand that you didn't                  14 rely on anything the court has said.                  15 Now I'm trying to identity what you,                  16 nonetheless, read that the court opined on prior                  17 to January 12th of this year, which is the date                  18 of your report.                  19 If you don't remember the titles or                  20 formal names of the opinions, tell me what the                  21 subjects were.                  22 A. To the best of my recollection, the                  23 subjects are motions to dismiss documents where                  24 the court has written a document that I think</p>



<p style="text-align: right;">Page 50</p> <p>1 the title has opinion in it.</p> <p>2 Q. Okay. And is it correct that when you</p> <p>3 read the motions to dismiss, there was nothing</p> <p>4 in there that the court shed light on which</p> <p>5 impacted your economic analysis or damage</p> <p>6 analysis?</p> <p>7 MR. GOLDBERG: Objection. Ambiguous.</p> <p>8 A. I don't recall if there was anything</p> <p>9 in them that shed light on my economic analysis.</p> <p>10 To the extent that there was something</p> <p>11 that is consistent with other documents that I</p> <p>12 have read that shed light on my economic</p> <p>13 analysis, I have relied on materials and</p> <p>14 information that are commonly relied upon by</p> <p>15 economists in reaching independent economic</p> <p>16 opinions, and I have not relied on an opinion of</p> <p>17 the court to reach my own opinion.</p> <p>18 Q. So if the court offered an opinion</p> <p>19 about the viability of a certain cause of action</p> <p>20 alleged in plaintiffs' complaint and the</p> <p>21 economic impact of that, you did not place any</p> <p>22 weight or reliance on such views; correct?</p> <p>23 A. I think it is not correct to phrase</p> <p>24 what I did in that way.</p>	<p style="text-align: right;">Page 52</p> <p>1 reviewed opinions of the court connected with</p> <p>2 motions to dismiss.</p> <p>3 To the best of my recollection, they</p> <p>4 are the same that I had reviewed earlier in the</p> <p>5 case. They are not things that I relied upon to</p> <p>6 reach my opinions.</p> <p>7 Q. Okay. And so if I've understood you,</p> <p>8 what you're saying is, you read opinions of the</p> <p>9 court on motions to dismiss both before and</p> <p>10 after you wrote your report, and in neither</p> <p>11 instance do you place reliance on the court's</p> <p>12 views; correct?</p> <p>13 MR. GOLDBERG: Objection.</p> <p>14 Mischaracterizes the testimony.</p> <p>15 A. For purposes of reaching my opinions</p> <p>16 with respect to the economic loss damages</p> <p>17 purportedly suffered by the class, I did not</p> <p>18 rely on a judge's legal opinion.</p> <p>19 I relied on my own training as an</p> <p>20 economist and the materials that an economist</p> <p>21 would typically consider in evaluating whether</p> <p>22 damages can be assessed with information and</p> <p>23 methods common to the class.</p> <p>24 Q. What do you mean by typically rely</p>
<p style="text-align: right;">Page 51</p> <p>1 I reviewed certain court documents.</p> <p>2 The opinion of the court that I have read does</p> <p>3 not -- is not something that I relied on in</p> <p>4 reaching my own opinions with respect to</p> <p>5 economic loss damages.</p> <p>6 Q. Did you read Dr. Conti's deposition</p> <p>7 testimony in preparation for today?</p> <p>8 A. I did.</p> <p>9 Q. What opinions were you shown or did</p> <p>10 you review after the preparation of your written</p> <p>11 report?</p> <p>12 You've only authored one written</p> <p>13 report; correct?</p> <p>14 A. In connection with this matter, that</p> <p>15 is correct.</p> <p>16 Q. When you say "in connection with this</p> <p>17 matter," have you authored any other writings in</p> <p>18 connection with this MDL which concerns</p> <p>19 Valsartan, Losartan and Irbesartan?</p> <p>20 A. I have not.</p> <p>21 Q. So the question is, What opinions of</p> <p>22 the court did you read and/or consider after the</p> <p>23 preparation of your one and only written report?</p> <p>24 A. To the best of my recollection, I have</p>	<p style="text-align: right;">Page 53</p> <p>1 upon?</p> <p>2 What do economists typically rely upon</p> <p>3 that you place reliance on to the exclusion of</p> <p>4 the court's views?</p> <p>5 A. I do not exclude the court's views. I</p> <p>6 did not rely on the court's views for purposes</p> <p>7 of my -- of reaching my opinions.</p> <p>8 The things that I rely upon, as I</p> <p>9 mentioned, my training and experience as an</p> <p>10 economist, that is, the economic -- the</p> <p>11 application of economic theory and models to</p> <p>12 business situations to assess whether there is</p> <p>13 economic loss to individuals in a given set of</p> <p>14 circumstances.</p> <p>15 Q. Does it matter to you to understand</p> <p>16 what the court's views about what the proper</p> <p>17 measure of damages is to do the work you were</p> <p>18 asked to do?</p> <p>19 MR. GOLDBERG: Objection to form.</p> <p>20 Ambiguous.</p> <p>21 A. To do the work that I was asked to do</p> <p>22 is what I have in my report.</p> <p>23 I was asked to assess whether damages</p> <p>24 could be determined on a class-wide basis with</p>

<p style="text-align: right;">Page 54</p> <p>1 information common to the class where those                  2 damages were economic loss damages.                  3 I have explained in my report the                  4 framework that I am using for economic loss                  5 damage.                  6 To carry out my assignment in this                  7 case, it was not necessary to take an                  8 assumption -- sorry -- to take an opinion of the                  9 court as an assumption in reaching my economic                  10 opinions.                  11 Q. You wrote, and I quote, I also do not                  12 opine on the legal issues relating to the proper                  13 measure of damages or on which measures should                  14 be used.                  15 Do you remember writing that?                  16 A. Yes.                  17 Q. Does it matter to you whether the                  18 court has a view or opinion on what the proper                  19 measure of damages is or which measure should be                  20 used? Is that relevant to you?                  21 A. I would anticipate, in the fullness of                  22 time, the court will eventually reach an opinion                  23 on the proper measure of damages to be used, and                  24 my report is something that I have been asked to</p>	<p style="text-align: right;">Page 56</p> <p>1 being asked to give my opinions on economic loss                  2 damages.                  3 Q. If you were told to assume VCDs in                  4 this case were adulterated under the meaning of                  5 the Food, Drug and Cosmetic Act, would that have                  6 changed any of your opinions in this case?                  7 A. No.                  8 Q. I'm sorry. Did you say no?                  9 A. I did say no.                  10 Q. Did you consider in any way in your                  11 economic analysis whether if the VCDs in                  12 question were adulterated as defined under that                  13 act, what impact it would have on your economic                  14 analysis and various conclusions?                  15 A. The question was, did I consider that?                  16 THE WITNESS: I'm sorry, Jeff. If you                  17 don't mind reading that one back to me as                  18 well.                  19 Q. I'll restate it.                  20 Did you consider in any way in your                  21 economic analysis whether if the VCDs in                  22 question were, in fact, adulterated as defined                  23 under the Food, Drug and Cosmetic Act, if that                  24 would influence or impact any of your economic</p>
<p style="text-align: right;">Page 55</p> <p>1 prepare that reflects my opinions on those                  2 topics.                  3 Q. If the fullness of time were to have                  4 occurred already and it coincided with today,                  5 and if you were told today what the court said                  6 is the proper measure of damages, or which                  7 measure should be used, would you accept that                  8 and rely upon it in forming opinions?                  9 A. I'm sorry. I need you to say the                  10 beginning of that again. I missed at least one                  11 of the words in your question. Not a technology                  12 issue. I just didn't hear it.                  13 MR. HONIK: Jeff, did you get my                  14 question?                  15 THE COURT REPORTER: Yes, I did.                  16 MR. HONIK: Would you be kind enough                  17 to read it to Dr. Stiroh.                  18 THE COURT REPORTER: Sure.                  19 (The record was read back.)                  20 A. I would not, for the reason that if                  21 the court has fully determined what the measure                  22 of damages is and does not require, or the                  23 parties do not believe, that there is any role                  24 for opinion testimony, I would not anticipate</p>	<p style="text-align: right;">Page 57</p> <p>1 analysis or conclusions?                  2 MR. GOLDBERG: Objection. Vague.                  3 Overbroad.                  4 A. I have considered that scenario.                  5 It does have an impact on my damages                  6 assessment.                  7 If it is not -- if the products at                  8 issue are not found to be adulterated or                  9 misbranded, my understanding is there would then                  10 be no damages arising from the conduct at issue.                  11 If their products at issue are found                  12 to be adulterated and misbranded, then, as I                  13 explained in my report, to an economist                  14 assessing diminution of value that comes from                  15 adulteration or misbranding, it matters the                  16 degree to which any product consumed by any                  17 consumer was adulterated or misbranded, the                  18 impact that that adulteration has for the                  19 efficacy of the drug for that consumer, whether                  20 it still has a therapeutic benefit to the                  21 consumer, the amount of the product that they                  22 consumed, the change in the risk profile for the                  23 consumer, and I understand that some of those                  24 factors depend on things individual to the</p>

<p style="text-align: right;">Page 58</p> <p>1 consumer, such at their weight and health                  2 history.                  3 Q. What is the proper measure of damages                  4 for a contaminated drug in the U.S. supply                  5 chain?                  6 MR. GOLDBERG: Object to form. Calls                  7 for a legal conclusion.                  8 A. I'm not offering an opinion on what                  9 the proper measure of damages is. I'm offering                  10 opinions on how to properly use economics to                  11 assess damages when those damages come from                  12 diminution of loss or differences in financial                  13 circumstances of patients.                  14 Q. What is the difference between the                  15 phrases you used, "proper measure of damages,"                  16 versus "which measure should be used"?                  17 Are those terms synonymous or                  18 different?                  19 A. They are different.                  20 Q. Can you tell me the difference.                  21 A. Yes. In my report when I use "proper                  22 measure of damages," I am speaking from the                  23 standpoint of an economist how to use economics                  24 properly in the measure of damages.</p>	<p style="text-align: right;">Page 60</p> <p>1 they synonymous as you've used them?                  2 A. They're not synonymous as I have used                  3 them. I think that the explanation that I gave                  4 you a minute ago is correct.                  5 I don't know with certainty, but it                  6 would not surprise me if elsewhere in the report                  7 I have used the phrase "to properly calculate                  8 economic damages" or "a proper measure of                  9 economic damages," or even just "a proper                  10 measure of damage" with the word "economic"                  11 elsewhere in the sentence.                  12 When I use "proper measure of damages"                  13 elsewhere in my report, I'm opining on                  14 economics.                  15 In this sentence that you have quoted                  16 that is towards the end of paragraph 5, I am                  17 clarifying that if there are legal issues that                  18 relate to the proper measure of damages as I                  19 would calculate them, I am not opining on the                  20 legal issues and I am not opining on which                  21 measure should be used.                  22 Q. So do you accept that legal issues can                  23 impact the proper measure of damages in a case                  24 such as this?</p>
<p style="text-align: right;">Page 59</p> <p>1 I am not opining to the court on which                  2 measure of damages, and in my report, I consider                  3 alternative approaches to damage valuation.                  4 Q. Okay. So what is -- what is "which                  5 measure should be used," how is that different?                  6 A. As I hear you say that, I -- I                  7 understand that to mean am I telling the court                  8 which measure should be used, and that is not                  9 what I am intending to do.                  10 Q. Okay. I think there's some confusion,                  11 and I apologize.                  12 I am directing your attention to                  13 paragraph 5 of your own report, marked as                  14 Exhibit 1, in which you write in the penultimate                  15 sentence, quote, I also do not opine on the                  16 legal issues relating to the proper measure of                  17 damages or on which measure should be used.                  18 Do you see that clause?                  19 A. I do.                  20 Q. And my question is, are those two                  21 different things, the proper measure of damages                  22 on the one hand, and which measures should be                  23 used on the other?                  24 Are they two different concepts or are</p>	<p style="text-align: right;">Page 61</p> <p>1 MR. GOLDBERG: Objection to form.                  2 A. I don't have an opinion on that.                  3 Q. Listen to my question.                  4 Do you accept that legal issues may                  5 have an impact on how and what the proper                  6 measure of damages is in this case?                  7 MR. GOLDBERG: Objection to form.                  8 Vague.                  9 A. I accept that there would be legal                  10 issues that could determine which measure of                  11 damages would be used.                  12 As we've just had in our exchange,                  13 when I use "proper measure of damages," I have                  14 in that an expectation that it is properly using                  15 economics, an economic theory.                  16 When you asked the question, it sounds                  17 like you maybe have a different measure or                  18 definition that is the legal theory.                  19 And what I've intended to do in the                  20 sentence that you've quoted in paragraph 5 is                  21 say specifically, that is not the subject I am                  22 opining on. I am opining on economic damages,                  23 and I do have an opinion on how economics would                  24 properly be used in determining economic</p>

<p>Page 62</p> <p>1 damages.</p> <p>2 Q. Right. And I'm only trying to</p> <p>3 understand to what extent, if any, you accept or</p> <p>4 allow that legal principles and legal</p> <p>5 conclusions in a case like this impact your</p> <p>6 economic measure of damage analysis.</p> <p>7 A. I guess I am not following your</p> <p>8 question, then, or would need it explained.</p> <p>9 I have written a report that gives my</p> <p>10 opinions. I would expect the court would take</p> <p>11 into account economic opinions as well as legal</p> <p>12 information.</p> <p>13 I do not have an opinion with respect</p> <p>14 to the legal framework. I have opinions with</p> <p>15 respect to the economic framework.</p> <p>16 If the court takes into account</p> <p>17 different information, and particularly a legal</p> <p>18 framework, I think that affects what the court</p> <p>19 does with my opinion. It does not affect my</p> <p>20 opinions, unless you give me an example that</p> <p>21 then I can consider.</p> <p>22 Q. So is it your testimony that the legal</p> <p>23 framework, to borrow your phrase, doesn't impact</p> <p>24 your economic analysis?</p> <p>Page 63</p> <p>1 A. It is my understanding that a court</p> <p>2 may take into account things other than</p> <p>3 economics in assessing damages.</p> <p>4 The things that I take into account</p> <p>5 are economic variables.</p> <p>6 I have in my report explained why I</p> <p>7 have an understanding that some of the</p> <p>8 approaches that I describe may also be of</p> <p>9 relevance to the court. I am not telling the</p> <p>10 court which ones to consider.</p> <p>11 Q. Yeah. Dr. Stiroh, respectfully,</p> <p>12 you've turned the question on its head.</p> <p>13 I have a well-developed understanding</p> <p>14 of what courts consider.</p> <p>15 What I have asked you is whether, in</p> <p>16 your economic analysis and your opinions, you</p> <p>17 considered the legal framework, as you used that</p> <p>18 term.</p> <p>19 MR. GOLDBERG: Objection to form.</p> <p>20 Argumentative. Asked and answered.</p> <p>21 A. I don't have a basis to incorporate a</p> <p>22 legal framework into my analysis.</p> <p>23 I am not a lawyer. I have worked on</p> <p>24 matters where, for example, there is a -- a</p>	<p>Page 64</p> <p>1 statutory prejudgment interest rate, and I have</p> <p>2 taken those cases -- where appropriate, I have</p> <p>3 taken the statutory interest rate and used it in</p> <p>4 analyses.</p> <p>5 I don't know -- I can't think of an</p> <p>6 example like that that is relevant here.</p> <p>7 Q. Does it matter to you when the point</p> <p>8 of injury occurred in this case?</p> <p>9 MR. GOLDBERG: Objection to form.</p> <p>10 Vague.</p> <p>11 A. It does.</p> <p>12 Q. In what way?</p> <p>13 A. I understand that the allegations</p> <p>14 include an allegation that the VCDs at issue</p> <p>15 increase the risk profile of a potentially</p> <p>16 adverse health outcome for patients that consume</p> <p>17 them.</p> <p>18 I understand that the change in the</p> <p>19 risk profile depends on factors such as the</p> <p>20 amount of the -- of the products at issue that</p> <p>21 were consumed, the weight of the person</p> <p>22 consuming them, and other health factors. Those</p> <p>23 can change over time.</p> <p>24 I have an analysis in my report that</p> <p>Page 65</p> <p>1 considers the available information on how long</p> <p>2 and how many and of what concentrations of the</p> <p>3 products at issue certain class members took.</p> <p>4 That timeframe comes into account in</p> <p>5 assessing whether damages can be determined on a</p> <p>6 class-wide basis with information common to the</p> <p>7 class.</p> <p>8 Q. Did you give any consideration to when</p> <p>9 the drugs were purchased in time, to your</p> <p>10 economic analysis?</p> <p>11 A. I --</p> <p>12 MR. GOLDBERG: Objection.</p> <p>13 A. I think my answer just -- I think my</p> <p>14 answer answered that question.</p> <p>15 It -- my understanding is that the</p> <p>16 class period for the consumers and TPPs starts</p> <p>17 in 2012 and goes to the recalls.</p> <p>18 And I consider that patients are</p> <p>19 differently situated over that timeframe, that</p> <p>20 there are potentially class members who have</p> <p>21 taken the products at issue for longer periods</p> <p>22 than others. And I describe that in my report.</p> <p>23 Q. You listed the plaintiffs' economic</p> <p>24 loss complaint, as well as our memorandum of law</p>
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<p style="text-align: right;">Page 66</p> <p>1 supporting class certification, as items that                  2 you read and relied upon; correct?                  3 A. Yes.                  4 Q. Did you glean from any of that when                  5 the plaintiffs allege that the economic harm                  6 occurred?                  7 And I don't mean the class period. I                  8 mean, when was economic harm occurring for each                  9 class member? Did you glean that?                  10 A. Are you asking me about the economic                  11 loss damages to the purported class of                  12 consumers?                  13 Q. Yes.                  14 MR. GOLDBERG: Objection to form.                  15 A. It is my understanding that the harm                  16 to consumers is alleged to come from consumption                  17 of the products at issue.                  18 The products at issue were --                  19 Q. And when you -- I apologize. I spoke                  20 over you. Go ahead.                  21 A. The product at issue were consumed in                  22 different amounts, in different quantities, and                  23 over different frame -- timeframes by the class,                  24 and I have considered that in my report.</p>	<p style="text-align: right;">Page 68</p> <p>1 the retailer?                  2 A. It is not my understanding that those                  3 are unrelated.                  4 Q. Well, how is that related to your                  5 analysis of the economic harm here?                  6 A. My consideration of economic harm                  7 includes a consideration of the difference                  8 between the price paid, which would be the price                  9 that was paid at retail, for example, for the                  10 products at issue, and the value received.                  11 And the value received would be the                  12 value that a patient who consumed the product                  13 received from consuming it.                  14 Q. So the definition of value in that                  15 sentence and in your analysis is the therapeutic                  16 value that was given or provided to the patient;                  17 correct?                  18 A. It includes the therapeutic value that                  19 was provided to the patient, yes.                  20 Q. What else is included in your                  21 definition of value in that construct?                  22 A. The -- other factors that could be                  23 considered in value to a patient that consumes                  24 it are the either presence or lack of side</p>
<p style="text-align: right;">Page 67</p> <p>1 Q. When you say "consumption," do you                  2 mean ingest?                  3 A. I do. Sorry about that. I do.                  4 Q. Did you in any way, shape or form                  5 consider that the economic harm is unrelated to                  6 consumption, but related to the purchase of the                  7 drug?                  8 A. I understand that the allegations of                  9 harm to TPPs are not related to their                  10 consumption of the drug.                  11 I understand that the allegations of                  12 harm to consumers comes from the fact that they                  13 have consumed a drug that includes impurities.                  14 If a consumer did not consume it or                  15 purchased it on behalf of somebody else, a -- a                  16 parent for a child, for example, I understand                  17 that it is considering the harm for -- on the                  18 consumers to the person that consumed the drug.                  19 Q. Is it your understanding, therefore,                  20 that the economic harm claimed in the economic                  21 loss complaint on behalf of the consumer class                  22 is unrelated to the purchase of the drug, that                  23 is, the transaction at the retail level in which                  24 some monies is exchanged between consumer and</p>	<p style="text-align: right;">Page 69</p> <p>1 effects from consuming the product at issue, the                  2 effectiveness of the drug that they have                  3 experienced relative to perhaps taking other                  4 blood pressure medications, the ease with which                  5 they can take it and remember to take it on a                  6 particular daily, weekly, timeframe.                  7 Whether they are obtaining it through                  8 a mail order and it comes to their house versus                  9 they have to drive to get it.                  10 There may be other things, but those                  11 are the ones that come to mind.                  12 Q. Are you able to assign economic values                  13 to the elements that you just laid out for me?                  14 A. Can you say what you mean by "assign                  15 economic value"?                  16 Q. Yeah. Assign a cash value to it, a                  17 dollar value to the elements you just described                  18 as making up value.                  19 MR. GOLDBERG: Objection to form.                  20 Ambiguous. Overbroad.                  21 A. From the standpoint of economic                  22 theory, things that give value to a consumer can                  23 be measured in dollar terms.                  24 Q. Okay. Have you done that in your</p>

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<p>1 analysis and report?</p> <p>2 A. I have not assessed the value of the</p> <p>3 products received on a</p> <p>4 class-member-by-class-member basis.</p> <p>5 My report and opinions of this class</p> <p>6 certification stage of the case includes the</p> <p>7 opinion that such an analysis requires</p> <p>8 individual information and cannot be performed</p> <p>9 on a class-wide basis.</p> <p>10 Q. Is there a reliable methodology of</p> <p>11 which you're aware that can place a dollar value</p> <p>12 on any of the elements of value that you've</p> <p>13 described to me?</p> <p>14 A. In a general sense, there are economic</p> <p>15 methods that have been used to assess changes in</p> <p>16 consumer welfare that to an economist means all</p> <p>17 of the aspects of value that a consumer would</p> <p>18 obtain.</p> <p>19 To assess damages or loss of consumer</p> <p>20 welfare in this matter, the diminution of value</p> <p>21 to a consumer depends on factors that are unique</p> <p>22 to a consumer and are not market-wide.</p> <p>23 So information in this matter would</p> <p>24 be, you would need individual-by-individual</p>	<p>1 hypothetical in your question.</p> <p>2 It had in it at the beginning, as I</p> <p>3 heard it --</p> <p>4 Q. I'll restate it for you. I'll restate</p> <p>5 it for you.</p> <p>6 I want you to assume that a court and</p> <p>7 a jury has concluded that the damages in this</p> <p>8 case total \$4 billion, which is the actual money</p> <p>9 paid by consumers and insurers for these</p> <p>10 contaminated drugs.</p> <p>11 You with me so far?</p> <p>12 A. Yes.</p> <p>13 Q. And I want you to further assume that</p> <p>14 the court will allow some evidence to diminish</p> <p>15 that number by value that the consumers or the</p> <p>16 TPPs received.</p> <p>17 Tell me how you would measure that and</p> <p>18 offer it as a -- what to deduct the \$4 billion</p> <p>19 number I asked you to assume.</p> <p>20 MR. GOLDBERG: Objection to form.</p> <p>21 Ambiguous.</p> <p>22 A. I don't understand your hypothetical.</p> <p>23 In my experience, if a jury has</p> <p>24 reached an opinion and conclusion that is after</p>
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<p>1 information to assess the diminution of value,</p> <p>2 if any.</p> <p>3 Q. Yeah. And assuming all of that to be</p> <p>4 true, it's correct that you didn't attempt to</p> <p>5 provide a formula or describe a methodology at</p> <p>6 which any of those values could be quantified;</p> <p>7 correct?</p> <p>8 A. I do not describe how an economist</p> <p>9 would consider putting a dollar value on loss of</p> <p>10 consumer welfare. It is the concept that is</p> <p>11 underlying my report.</p> <p>12 I described the information that would</p> <p>13 be needed to do so and note that that</p> <p>14 information is individualized and not</p> <p>15 class-wide.</p> <p>16 Q. So, in other words, if a court and/or</p> <p>17 jury were to decide that the proper measure of</p> <p>18 damages in this case is the actual dollars paid</p> <p>19 by both consumers as well as TPPs, and that</p> <p>20 number is \$4.4 billion, you would have no way to</p> <p>21 reduce that by ascribing any value or diminution</p> <p>22 to the value elements that you described for me;</p> <p>23 correct?</p> <p>24 A. I don't think I'm following the</p>	<p>1 I have given my report and testimony, and I --</p> <p>2 my role has typically ended.</p> <p>3 Q. I want you to assume the following,</p> <p>4 and I want you to listen carefully to me.</p> <p>5 I want you to assume you haven't</p> <p>6 testified yet.</p> <p>7 I want you to assume that the result</p> <p>8 of a legal proceeding is that gross damages in</p> <p>9 the amount of \$4 billion have been arrived at</p> <p>10 through testimony other than your own and</p> <p>11 through legal conclusions that the court made,</p> <p>12 and that the gross damages in this hypothetical</p> <p>13 case is \$4 billion, which was derived at by</p> <p>14 simply adding the amount of that consumers paid</p> <p>15 and insurers paid, and the court is now inviting</p> <p>16 you as an expert to tell the court how to</p> <p>17 diminish that sum by the value which you believe</p> <p>18 the consumers or insurers in this case received.</p> <p>19 Tell me the method by which you will</p> <p>20 apprise the court how to diminish the 4 billion</p> <p>21 sum.</p> <p>22 A. In a scenario where the court has</p> <p>23 determined a sum of money, if -- to me, if they</p> <p>24 have determined what damages are, then I have</p>



<p style="text-align: right;">Page 74</p> <p>1 got to say this is outside of my experience to 2 understand what it is that I'm now being asked 3 to do. 4 If a judge were to tell me, I 5 understand, here is all of the spending on the 6 drugs. How do I get from this spending to what 7 are economic damages? 8 Depending on the information that I 9 have available to me, if it is the set of 10 information that I have in my report, I would 11 explain to the judge that individual information 12 is required from consumers to assess the 13 diminution of value in the product that they 14 actually experienced. 15 Q. And you would agree you didn't do that 16 in your report; correct? 17 A. I don't think that is correct. 18 I think exactly what I have done in my 19 report is to tell the court or the judge that 20 individual information is required to assess 21 diminution of value. 22 Q. Did you provide a methodology for 23 arriving at a dollar value assigned to the 24 intangible values you've described?</p>	<p style="text-align: right;">Page 76</p> <p>1 Can we take a minute off -- can we 2 take a minute off the record? We've been 3 going -- I know we had a break, but I would 4 like to take a -- a bio break, if we could. 5 MR. HONIK: Yeah. Okay. I'm in the 6 middle of something. There's one or two 7 questions that would be a more -- 8 MR. GOLDBERG: Okay. Why don't you go 9 ahead. That's fine. Go ahead, Ruben. 10 Q. Dr. Stiroh, did it matter to you in 11 your analysis and in arriving at your opinions 12 whether it is permissible under U.S. law to sell 13 adulterated or misbranded drugs to U.S. 14 consumers and end payers? 15 A. It matters to my opinions. 16 I have an opinion that that fact, if 17 or where true, does not mean that the drugs do 18 not have value to consumers. 19 I have opinions in my report that 20 relate to the fact that the drugs at issue were, 21 in fact, sold and consumed by consumers. 22 Q. If you were told to assume that 23 adulterated drug products cannot be placed into 24 the stream of commerce, would any of your</p>
<p style="text-align: right;">Page 75</p> <p>1 A. I have not laid out a framework in my 2 report for assessing the reduction in consumer 3 welfare, if any. 4 I have described that that cannot be 5 done without information that is individualized. 6 Q. Did you consider whether or not 7 adulterated drugs can be placed into and sold 8 within the U.S. drug supply market, that is, 9 placed into the interstate commerce in the 10 United States? 11 A. I have considered that -- in my 12 report, I have considered that in the context of 13 evaluating Dr. Conti's opinions. 14 I have an example in my report where 15 it is not reasonable from an economic standpoint 16 to assume that a product loses value because it 17 is not FDA approved in the U.S. where it may be 18 FDA approved elsewhere, and that it is not 19 reasonable to assume from an economic standpoint 20 that because it is not FDA approved, it would 21 have zero value to all potential consumers. 22 MR. GOLDBERG: Ruben, could we -- 23 Q. Did it matter to you -- 24 MR. GOLDBERG: Can you hear me?</p>	<p style="text-align: right;">Page 77</p> <p>1 opinions have changed? 2 A. On a going-backward basis for 3 considering the diminution of value, if any, for 4 products that were consumed, that factor does 5 not affect whether consumers obtained value for 6 the product that they consumed, I have 7 considered and described elsewhere in my report 8 a consideration of how to evaluate differences 9 in financial outcomes for consumers if the 10 products had not ever been available in the 11 United States. 12 MR. HONIK: This is a good time to 13 break. 14 Go off the record. 15 THE VIDEOGRAPHER: The time now is 16 12:07 p.m. We are off the record. 17 (A recess was taken from 12:07 to 18 12:15.) 19 THE VIDEOGRAPHER: The time right now 20 is 12:15 p.m. We are back on the record. 21 Q. Dr. Stiroh, are you ready to proceed? 22 A. I am. Thank you. 23 Q. I want to develop just a little kind 24 of -- call it almost a side understanding here</p>

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<p>1 by way of a -- an illustration unrelated to this 2 case specifically, but just to understand how 3 you do certain things as an economist in 4 analyzing litigation issues.</p> <p>5 If you're working on an antitrust 6 case, for example, involving a claim of generic 7 delay -- an antitrust claim of generic delay, 8 would an economist -- or doesn't an economist 9 typically try to assess what impact to the cost 10 of the drugs during the period of delay may or 11 may not have occurred?</p> <p>12 A. In a generic delay case, an economist 13 may consider potentially whether there was a 14 difference in the cost of the drugs, but also 15 the price of the drugs to which they were sold 16 through various channels of distribution.</p> <p>17 Q. Right. And I -- look, I don't want to 18 belabor this. I just -- I don't need to be 19 provocative. I just want to get certain 20 understanding about how you go about things as 21 an economist.</p> <p>22 But the claim in that case is that 23 consumers and/or insurers pay more for the drug 24 than they should have because there was some</p>	<p>1 outcomes would have been had the point of 2 generic entry occurred earlier.</p> <p>3 Q. Right. When you say "back-casting," 4 you mean creating a but-for world where there is 5 different points of generic entry; right?</p> <p>6 A. Yes.</p> <p>7 Q. And all I -- and here is, sort of, the 8 punch line.</p> <p>9 I just want to understand, where do 10 you collect or get the historic data for 11 pricing?</p> <p>12 A. In cases that I have worked on, there 13 have been -- has been available data both for 14 scenarios where there are few generic 15 manufacturers and cases where there then has 16 been later in the timeframe generic entry.</p> <p>17 And from the actual data on actual 18 transactions for the products at issue, it is 19 possible to construct a model to say what if 20 the -- a generic had entered six months earlier?</p> <p>21 And we see from the pricing pattern 22 what actually happened to prices when the 23 generic did enter, and we consider can that be 24 moved back six months? How did economic</p>
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<p>1 collusion or antitrust behavior that caused the 2 delay for generic entry.</p> <p>3 That's what those cases are about; 4 right?</p> <p>5 MR. GOLDBERG: Objection to form. 6 Ambiguous.</p> <p>7 A. There are generic delay cases that I 8 am aware of that have the economic component 9 that I would be familiar with is that the -- the 10 price of the product is higher than it otherwise 11 would be.</p> <p>12 But for the delay, there could also be 13 a component that the cost is also different.</p> <p>14 Q. Where do you turn to to understand 15 what the pricing is or was for the drugs in 16 question in that scenario? Where do you turn?</p> <p>17 A. In cases where I have worked on a 18 generic delay matter, the data that I look at is 19 frequently historic data.</p> <p>20 Cases that I have been involved in 21 have had a period where there is no generic 22 entry and a period when there is generic entry, 23 and the economic exercise is essentially 24 back-casting from that data to consider what</p>	<p>1 conditions vary in the six-month-earlier period?</p> <p>2 Are there other factors, such as availability of 3 the active ingredient? Factors such as that.</p> <p>4 But it's essentially in matters like 5 that that I have worked on.</p> <p>6 There are cases where we do have 7 representative data to show what happens when 8 there is generic entry and how prices behaved 9 prior to generic entry.</p> <p>10 Q. Yeah. I understand all that.</p> <p>11 And do you get the pricing data from 12 IQVIA?</p> <p>13 A. I have worked with pricing data from 14 IQVIA for matters like that, yes.</p> <p>15 Q. And you find that reliable data?</p> <p>16 MR. GOLDBERG: Objection to form. 17 Speculative. Ambiguous.</p> <p>18 A. It matters as to what it is that I am 19 using it for.</p> <p>20 The IQVIA data are generally used, in 21 my experience in pharmaceutical matters, because 22 they gather data from a variety of different 23 sources.</p> <p>24 In matters that I have worked on, it</p>

<p style="text-align: right;">Page 82</p> <p>1 may be that that -- those data are supplemented                  2 by information on sales and prices from the                  3 manufacturers.                  4 But I have used IQVIA data in other                  5 matters.                  6 Q. So if I heard you correctly, there are                  7 two sources for what you described as historic                  8 data -- or historical data: Sales and pricing                  9 from the actual manufacturer, as well as pricing                  10 information from IQVIA; correct?                  11 A. I'm not sure what you're asking me.                  12 Are you asking me specifically what I                  13 have looked at, or you're asking me to tell you                  14 what might be available in a generic delay case?                  15 Q. I'm asking you if as an economist in                  16 doing antitrust cases, you routinely rely on                  17 both IQVIA sales data, pricing data, as well as,                  18 when available, sales and pricing data from the                  19 manufacturer of a particular pharmaceutical drug                  20 product. Yes or no?                  21 MR. GOLDBERG: Objection to form.                  22 Ambiguous.                  23 A. In matters that I have been involved                  24 in that involved pharmaceutical markets, I have</p>	<p style="text-align: right;">Page 84</p> <p>1 A. I don't think that is correct.                  2 I have read the complaint. I have                  3 read the information in -- that is listed in my                  4 Exhibit 2 to my report.                  5 I have reviewed other information on                  6 other court filings, but I did not set out to                  7 understand all of the theories of harm or                  8 liability from a legal standpoint.                  9 I have looked at information that is                  10 relevant to a consideration of economic loss                  11 damages.                  12 Q. Did you consider whether or if                  13 warranties were breached in this case?                  14 A. I did not make an assumption one way                  15 or another whether or if warranties were                  16 breached in this case.                  17 Q. Did you consider what the proper                  18 measure of damages would be for a breach of                  19 warranty-based claim?                  20 MR. GOLDBERG: Objection to form.                  21 Calls for a legal opinion.                  22 A. I'm not opining and not offering an                  23 opinion to the court on what the appropriate                  24 measure of damages would be for a breach of</p>
<p style="text-align: right;">Page 83</p> <p>1 relied on IQVIA data.                  2 I don't know if I can say that I                  3 relied on it in every instance, but I have                  4 relied on IQVIA data, and I have relied on                  5 information available from the manufacturers.                  6 Q. Thank you.                  7 Now, before we broke, we spoke a                  8 little bit about the impact of the theories of                  9 liability in this case to your economic                  10 analysis.                  11 Do you remember we talked a bit about                  12 that?                  13 A. I do.                  14 Q. And I know you discussed and you                  15 listed among your -- the reliance materials the                  16 complaint in this case which formed the                  17 plaintiffs' allegations.                  18 You've looked at the briefing on class                  19 certification.                  20 You've certainly acquainted yourself                  21 with the various theories of liability against                  22 not only the manufacturers, but all of the                  23 defendant entities in this supply chain;                  24 correct?</p>	<p style="text-align: right;">Page 85</p> <p>1 warranty claim.                  2 I have considered the economic                  3 theories that underlie economic losses and                  4 described how I approached that type of                  5 analysis.                  6 And to the extent that that is                  7 relevant to various theories of liability that a                  8 court might consider, the court can take my                  9 opinion into account.                  10 I have not set out to tell the court                  11 what theory of damages applies to different                  12 theories of harm.                  13 Q. I'm a little confused.                  14 What do you mean by "underlying                  15 theories" in your answer?                  16 A. I'm not sure how I used it.                  17 Q. Okay.                  18 MR. HONIK: Jeff, can I have the                  19 answer read back to me, please.                  20 (The record was read back.)                  21 Q. Dr. Stiroh, what did you mean by                  22 "considered economic theories" in that response                  23 that the court reporter just read back?                  24 A. I had in mind the discussion that is</p>

<p>Page 86</p> <p>1 in my report that considers diminution of value 2 being the difference between the price paid and 3 the value received. From an economic 4 standpoint, that is a change in consumer 5 surplus. 6 I have also considered a difference in 7 financial outcomes, and that is the difference 8 in prices paid in a scenario where the products 9 at issue were consumed compared to a scenario 10 where alternative products would have been 11 purchased. 12 Q. Well, is it fair to say that each of 13 the two models that you just described would be 14 measures of damage? 15 MR. GOLDBERG: Objection. Calls for a 16 legal opinion. 17 THE COURT REPORTER: Counsel, could 18 you repeat that question? I didn't hear it 19 clearly. This is Jeff. 20 Q. Did you hear it, Dr. Stiroh? 21 A. I believe that I did, yes. 22 Q. Okay. For the benefit of the court 23 reporter, let me try to restate or rephrase it. 24 You described, one -- I'll call it a</p> <p>Page 87</p> <p>1 model or a measure that you referred to as 2 "diminution of value." 3 Do you remember that? 4 A. Yes. 5 Q. And then you described what I 6 understood, and I wrote down in shorthand, 7 another measure or formula that you referred to 8 as "financial outcome." 9 Do you remember that? 10 A. I do. 11 Q. The second of those two, the 12 financial -- could we refer to it, just for ease 13 of reference in our talk here, to the second 14 model or measure as financial outcome and the 15 first one diminution? 16 Would that be okay with you? 17 A. Yes. 18 Q. So if we focus on financial outcome, 19 if I listen carefully, the formula for 20 determining damages under that approach would be 21 prices paid and compare it to alternative 22 product cost; correct? 23 A. You are describing for me what I said 24 is a model comparing financial outcomes?</p>	<p>Page 88</p> <p>1 Q. Yes, ma'am. 2 A. I think you use "cost" differently 3 from how I use it, and I'm concerned there could 4 be some confusion. 5 I -- my model, where I would consider 6 differences in financial outcomes from the 7 standpoint of a consumer, I consider the 8 financial outlay, the difference in their 9 financial position purchasing the products at 10 issue and an alternative product. 11 For a -- somebody further upstream, 12 then it may be relevant to consider the 13 difference in both the prices paid and the costs 14 of the -- acquiring the product. 15 Q. Yeah. So I completely understand. 16 Let me give you an illustration of 17 what I understand you mean by the measure of 18 damages we're referring to as financial outcome. 19 If someone pays \$10 for a drug and you 20 now want to compare the cost of getting an 21 alternative drug, if that alternative drug is 22 \$12, there's no economic loss, because the 23 alternative cost exceeds the paid price; 24 correct, in that hypothetical? Right?</p> <p>Page 89</p> <p>1 A. No. In that hypothetical, there is no 2 financial loss to the consumers. 3 I have defined economic loss in my 4 report as a difference between the price paid 5 and the value received. 6 Q. Okay. But I don't want to leave this 7 area until I've understood the two measures that 8 you've outlined for me. 9 And the one we're going to focus on 10 now is what we referred to -- I referred to, and 11 you agreed to accept -- as financial outcome. 12 Can you give me an example using 13 specific drugs and costs and tell me how 14 financial outcome is a measure? 15 A. If there were a consumer that was 16 taking Valsartan, and in the absence of supply 17 of the Valsartan that they consumed they would 18 have switched to Irbesartan, the difference in 19 financial outcomes for them depends on whether 20 they are a cash consumer and pay a retail price 21 for two products, because the retail prices are 22 different, or whether they are insured, and then 23 it depends on their insurance plan and what the 24 co-pay or co-insurance amount is for differences</p>
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<p style="text-align: right;">Page 90</p> <p>1 for the -- the two products.</p> <p>2 The exercise is to consider what were</p> <p>3 the financial outlays for the Valsartan that</p> <p>4 they purchased and what the financial outlays</p> <p>5 would have been had they consumed a different</p> <p>6 blood pressure medication.</p> <p>7 Q. That's correct. So if the financial</p> <p>8 outlay would have been \$10 for the Valsartan and</p> <p>9 the replacement drug is \$12, there's no</p> <p>10 financial outlay or loss to that consumer,</p> <p>11 right; in the simplest terms; right?</p> <p>12 A. If the financial outlay would have</p> <p>13 been the same, that is correct, there is no</p> <p>14 difference in the financial outcomes for the</p> <p>15 consumer.</p> <p>16 Q. I actually completely misspoke. I</p> <p>17 misspoke.</p> <p>18 If the replacement drug was actually</p> <p>19 \$12, or \$2 more, their loss is \$2, in my</p> <p>20 hypothetical; correct?</p> <p>21 A. No. I think you have assumed that the</p> <p>22 financial outlay for the replacement drug is</p> <p>23 higher, which is a reasonable assumption,</p> <p>24 because I think the replacement drugs often did</p>	<p style="text-align: right;">Page 92</p> <p>1 they go for, pay for a month's supply of</p> <p>2 Valsartan and a month's supply of the</p> <p>3 replacement product, the financial loss is \$2 in</p> <p>4 your scenario.</p> <p>5 Q. And turning to the diminution model,</p> <p>6 which you said was price minus the value</p> <p>7 received, if the price of the drug was \$10 and</p> <p>8 the value you're ascribing is control of one's</p> <p>9 blood pressure, what would the deduction be?</p> <p>10 A. The -- sorry. The scenario here is to</p> <p>11 consider for a consumer the diminution of value</p> <p>12 from the Valsartan at issue?</p> <p>13 Q. That's right.</p> <p>14 A. Yes. Then the consideration for that</p> <p>15 consumer is how they value the -- or would price</p> <p>16 the increased risk of their consumption of</p> <p>17 Valsartan, if any, because of the presence of</p> <p>18 alternatives, and whether that has a change to</p> <p>19 their risk profile of eventually contracting a</p> <p>20 disease that they wouldn't, in the absence of</p> <p>21 the impurities at issue.</p> <p>22 And the diminution of value, their</p> <p>23 internal intrinsic valuation of the product</p> <p>24 would depend on things such as how much they had</p>
<p style="text-align: right;">Page 91</p> <p>1 have a higher price.</p> <p>2 But for that consumer, they did not</p> <p>3 suffer a financial loss from taking the</p> <p>4 Valsartan at issue, because their financial</p> <p>5 outlays would have been higher in the absence of</p> <p>6 the supply of the Valsartan product that they</p> <p>7 consumed.</p> <p>8 Q. What if the replacement drug was less</p> <p>9 expensive than the \$10 Valsartan cost?</p> <p>10 A. In instances for class members who</p> <p>11 would have switched to a replacement drug and</p> <p>12 had a lower financial outlay, their financial</p> <p>13 losses are calculated as the difference in the</p> <p>14 financial outlay consuming Valsartan and the</p> <p>15 financial outlay that they would have had with a</p> <p>16 different medication.</p> <p>17 Q. So if in my hypothetical it was \$10</p> <p>18 for the Valsartan and \$8 for the replacement or</p> <p>19 alternative, what's the loss for that consumer</p> <p>20 in your model?</p> <p>21 A. The financial loss to the consumer in</p> <p>22 that model would be \$2.</p> <p>23 If it is assuming equivalence of the</p> <p>24 product that they're purchasing, if that is what</p>	<p style="text-align: right;">Page 93</p> <p>1 to consume, over what timeframe, the degree of</p> <p>2 impurities, if any, in the product that they</p> <p>3 consumed, their ability to manage their blood</p> <p>4 pressure with Valsartan compared to what the</p> <p>5 alternative products might be, what side effects</p> <p>6 of alternatives might be that made Valsartan be</p> <p>7 the product of choice for that consumer, and, my</p> <p>8 understanding, things like their weight and</p> <p>9 health history.</p> <p>10 Q. Dr. Stiroh, I confess, I'm completely</p> <p>11 confused by your answer.</p> <p>12 What I want to understand before</p> <p>13 moving on is how your diminution model works.</p> <p>14 And I want you to assume that a</p> <p>15 particular consumer of a VCD has paid \$10 for</p> <p>16 his or her prescription.</p> <p>17 And the question in court and for you</p> <p>18 as an economist is, what, if any, financial loss</p> <p>19 did that individual suffer by accepting as true</p> <p>20 that there's some impurity or contamination to</p> <p>21 that product?</p> <p>22 What would you look at in the</p> <p>23 diminution model, assuming the consumer paid</p> <p>24 \$10?</p>

<p style="text-align: right;">Page 94</p> <p>1 Tell me what you would do step by</p> <p>2 step.</p> <p>3 MR. GOLDBERG: Objection. Asked and</p> <p>4 answered.</p> <p>5 A. I think in your question you added</p> <p>6 financial loss into how I would approach the</p> <p>7 diminution.</p> <p>8 I have described them in my report as</p> <p>9 two separate pieces.</p> <p>10 The financial loss is what comes out</p> <p>11 of your pocket.</p> <p>12 The diminution of value starts with an</p> <p>13 economic framework where the price that a person</p> <p>14 pays for a product, the fact that they have gone</p> <p>15 and paid that price indicates to an economist</p> <p>16 that they value the product at least as much as</p> <p>17 the price paid.</p> <p>18 If there is additional information</p> <p>19 that comes to light that changes their</p> <p>20 understanding of a product that they received,</p> <p>21 so that they understand that they received a</p> <p>22 different product than they believed they were</p> <p>23 purchasing, it is possible that their value for</p> <p>24 that product would have been diminished.</p>	<p style="text-align: right;">Page 96</p> <p>1 explain them, then I'll consider them.</p> <p>2 Q. Yes, I can tell you.</p> <p>3 I wrote down that you said one way to</p> <p>4 look at value is, quote, financial loss is what</p> <p>5 comes out of your pocket.</p> <p>6 Remember you told me that?</p> <p>7 A. I did tell you that.</p> <p>8 My recollection when I said that was</p> <p>9 because the question that you had asked me had</p> <p>10 diminution of value and financial loss.</p> <p>11 And in the prior questions, we had</p> <p>12 separated those two topics, and I was clarifying</p> <p>13 for you the financial loss discussion has to do</p> <p>14 with the money that comes out of your pocket.</p> <p>15 The diminution of value discussion has</p> <p>16 to do with the intrinsic value of a product to a</p> <p>17 consumer who purchases it.</p> <p>18 Q. That's right. Financial loss is</p> <p>19 defined by you as what comes out of your pocket,</p> <p>20 and diminution in value is what you paid less</p> <p>21 consumer welfare; right, loss of consumer</p> <p>22 welfare?</p> <p>23 Is that what you said?</p> <p>24 A. Yes.</p>
<p style="text-align: right;">Page 95</p> <p>1 As economists, we think of that as a</p> <p>2 loss of consumer surplus. I think I used the</p> <p>3 phrase "consumer welfare." I mean them</p> <p>4 equivalently.</p> <p>5 The measures of consumer welfare would</p> <p>6 depend on what the loss of intrinsic value to a</p> <p>7 customer is based on the new information about</p> <p>8 the product that they consumed.</p> <p>9 That diminution is going to depend on</p> <p>10 factors that are specific to an individual, such</p> <p>11 as the risk of consuming it, the information</p> <p>12 that they may receive from their doctor, their</p> <p>13 health histories, their own aversion to risk, or</p> <p>14 their willingness to accept risk because of the</p> <p>15 attributes of the product that they feel they</p> <p>16 cannot get elsewhere.</p> <p>17 Q. That is extremely helpful, because if</p> <p>18 I've understood you correctly, there are</p> <p>19 actually two definitions of "value," according</p> <p>20 to you in your last answer; correct?</p> <p>21 MR. GOLDBERG: Objection to form.</p> <p>22 Ambiguous. Mischaracterizes the testimony.</p> <p>23 A. I don't know what you have in mind as</p> <p>24 my two definitions of "value." If you could</p>	<p style="text-align: right;">Page 97</p> <p>1 Q. And so if we focus only on what you've</p> <p>2 now defined for all of us as financial loss,</p> <p>3 namely, what comes out of your pocket, that --</p> <p>4 that's one measure of damage; right?</p> <p>5 MR. GOLDBERG: Objection to form.</p> <p>6 Calls for a legal opinion.</p> <p>7 A. Financial losses have been used as a</p> <p>8 measure of damages in economic matters in which</p> <p>9 I have been engaged.</p> <p>10 Diminution of value considers other</p> <p>11 factors, not just the market prices of products.</p> <p>12 Q. Tell me as succinctly as you can how</p> <p>13 you yourself have used and measured financial</p> <p>14 loss in matters in which you've been engaged as</p> <p>15 an expert economist.</p> <p>16 A. I have considered -- sorry. Just to</p> <p>17 make sure I'm answering it correctly, I'm just</p> <p>18 going to ask that the question be read back</p> <p>19 again.</p> <p>20 Q. Sure.</p> <p>21 (The record was read back.)</p> <p>22 A. All right. I have measured financial</p> <p>23 loss for a class of franchisees who were the --</p> <p>24 alleged wrongdoing was that they did not have</p>



<p>Page 98</p> <p>1 available to them multiple source of supply for                  2 products that they needed to run their                  3 franchises.                  4 And I measured that using a regression                  5 analysis where I compared the prices for the                  6 necessary inputs where there were multiple                  7 sources of supply, with necessary inputs where                  8 there were few sources of supply to estimate                  9 what happens to prices when there are available                  10 additional sources of supply.                  11 And I used that to estimate what the                  12 difference in profits would have been for the                  13 franchisees had there been additional sources of                  14 supply for a number of necessary products.                  15 I have performed --                  16 Q. Let me -- I'm sorry. I didn't mean to                  17 cut you off. Please continue.                  18 A. I understood that your question to ask                  19 me how I have done this, but -- how I have                  20 considered financial losses, and I can take you                  21 through the ones that I remember.                  22 Q. Let me clarify.                  23 As a way of explaining to me and to                  24 others listening to you, as an economist, what</p>	<p>Page 100</p> <p>1 certain inputs, in addition to, or in the                  2 alternative, where the conduct at issue affects                  3 the prices of products paid, I have worked on                  4 matters where the conduct at issue affects the                  5 availability of alternative products.                  6 Basically, economics has to do with                  7 the interaction of various economic variables,                  8 and if something changes in the supply chain,                  9 there may be other economic implications for                  10 other variables.                  11 And the economist's role would be to                  12 consider those implications and arrive at a                  13 comparison of the financial situation as is and                  14 the financial situation as it would have been                  15 under different circumstances.                  16 Q. I totally understand that answer.                  17 What you're conveying is that you                  18 start by looking, as you put it, at economic                  19 circumstances, which is often the price in                  20 question that was paid; right?                  21 That's where you started; correct?                  22 A. That is often a starting place,                  23 correct.                  24 Q. That's right. It's often the starting</p>
<p>Page 99</p> <p>1 the formula or model is for financial loss. I                  2 understand you've given a very concrete example.                  3 Can you give me a somewhat more                  4 generic -- generic or general description of how                  5 financial loss as an economist is arrived at,                  6 that is, how you figure out someone or some                  7 entity's loss coming out of their pocket?                  8 How do you determine that?                  9 A. I consider --                  10 MR. GOLDBERG: Objection. Ambiguous.                  11 A. -- the economic circumstances of the                  12 entity in the world as it is, and that may                  13 include the prices paid, or for an entity                  14 further up the distribution chain, the prices                  15 paid in the costs -- or the prices received and                  16 the costs paid, and I consider what the economic                  17 variables would be in the absence of some                  18 conduct that is challenged as being wrongful.                  19 And that analysis depends on what                  20 conduct is challenged to be wrongful and the way                  21 that that conduct would interact with economic                  22 variables.                  23 I have worked on matters where the                  24 conduct at issue would affect the cost of</p>	<p>Page 101</p> <p>1 place.                  2 And then if I've understood you, what                  3 you look at is the alleged conduct that alters                  4 that construct, the liability, and you look at                  5 and consider a but-for world of sorts in which                  6 that conduct did not occur, and then you try to                  7 figure out that economic variable in its absence                  8 what impact to price occurs; right?                  9 A. I don't --                  10 MR. GOLDBERG: Objection. Ambiguous.                  11 THE WITNESS: Sorry.                  12 A. I don't think so precisely.                  13 You put the word "liability," when --                  14 in your restatement, and that's not something                  15 that I considered.                  16 I consider the economic implications                  17 of conduct and not liability because -- as I                  18 understand it as a legal matter.                  19 Q. I take your point. And you're right,                  20 I speak as a lawyer.                  21 And, really, what I meant to say and                  22 should have said is "conduct." That's the word                  23 you used to describe the shift or the point of                  24 comparison, economically speaking, between the</p>

<p style="text-align: right;">Page 102</p> <p>1 starting point, which is the price paid, and                  2 this sort of but-for economic scenario that was                  3 caused by some conduct; correct?                  4 MR. GOLDBERG: Objection.                  5 Mischaracterizes.                  6 A. I think at a high level, that is                  7 correct.                  8 I consider the economic scenario that                  9 would have unfolded absent some type of conduct                  10 in a consideration of financial loss damages                  11 where the financial losses are differences in                  12 economic outcomes.                  13 Q. And reasonable economic minds can                  14 disagree about the components of that model or                  15 measure; isn't that true?                  16 MR. GOLDBERG: Objection to form.                  17 Ambiguous.                  18 A. I don't know what you have in mind                  19 about what the reasonable minds would disagree                  20 on with respect to the components of that                  21 measure.                  22 I have been involved in matters where                  23 there was disagreement over the appropriate                  24 interest rate, what the cost implications of</p>	<p style="text-align: right;">Page 104</p> <p>1 these VCDs during the class period; correct?                  2 A. Did you say there's no ambiguity in my                  3 mind?                  4 Q. That's right.                  5 A. I'm not aware of a dispute on those                  6 market facts. If there is one, it's something                  7 that I'm not aware of.                  8 I understand that to be in the class,                  9 a consumer had to have paid some amount for a --                  10 for the Valsartan that they consumed.                  11 Q. That's right. I mean, the                  12 prescription records are so abundantly detailed,                  13 that we know exactly what consumers contributed                  14 and we know how much insurers paid.                  15 That's not in dispute in this case;                  16 right?                  17 A. I disagree with that.                  18 MR. GOLDBERG: Objection to form.                  19 A. One of the issues that matters at the                  20 class certification stage is whether you can                  21 tell whether a class member has -- what amount                  22 they have paid. And I think you need to do --                  23 you need individual information from class                  24 members on that.</p>
<p style="text-align: right;">Page 103</p> <p>1 certain conduct was, what available alternatives                  2 might have been.                  3 I don't know if I'm agreeing with you                  4 or disagreeing with you at this point.                  5 Q. No. I -- I kind of get what you're                  6 doing.                  7 So reasonable economic minds could                  8 disagree about the starting pricing, right, that                  9 you're starting with the -- as you put it,                  10 economic circumstances, you -- one could                  11 disagree about what the starting price is;                  12 right?                  13 A. I would have to think of a situation,                  14 and I don't -- only because when I said starting                  15 price and agreement with you, I had in mind                  16 actual prices as they are. Those would be                  17 market facts. Those -- that would be                  18 information in the record, and I don't see a                  19 dispute over that.                  20 Q. Okay. So let's start with that.                  21 That's a good starting place.                  22 There's no dispute in your mind that                  23 the market fact, the market reality, is that                  24 consumers and insurers paid what they paid for</p>	<p style="text-align: right;">Page 105</p> <p>1 I think that what you are saying is                  2 some amount in aggregate. And even there, there                  3 could be dispute over whether that is the amount                  4 paid or whether it fails to include things like                  5 discounts or rebates that were given at a time                  6 and collected in a different database and cannot                  7 be accurately tied back to the initial purchase.                  8 Q. Do you -- do you dispute anywhere in                  9 your report what the economic circumstances or                  10 prices paid were by the two economic classes?                  11 A. I do not dispute that there were                  12 prices paid by the two purported classes.                  13 It is my opinion that to assess on a                  14 class-member-by-class-member basis what the                  15 damages incurred by any individual class member,                  16 you would need information on the price that                  17 that actual class member paid. And that                  18 information is not widely available. It is --                  19 to my mind, we only --                  20 Q. Weren't you --                  21 MR. GOLDBERG: Hang on. Wait. Let                  22 the witness answer the question.                  23 A. I understand that there has been some                  24 data provided only by three plaintiffs, and one</p>

<p style="text-align: right;">Page 106</p> <p>1 plaintiff had, I think, some aggregated data,                  2 but I don't think that there exists in this case                  3 class-member-by-class-member expenditures on the                  4 products at issue.                  5 Q. Class-member-by-class-member                  6 expenditures? Is that what you said?                  7 A. It is.                  8 Q. Is it your opinion that                  9 class-member-by-class-member expenditure needs                  10 to be demonstrated in order to certify a class?                  11 Is that your opinion?                  12 MR. GOLDBERG: Objection to form.                  13 Calls for a legal opinion.                  14 A. My understanding as an economist is                  15 that one of the things that a court would                  16 consider in determining to certify a class is                  17 whether the class members have been harmed.                  18 And when I use "harm," I use it in an                  19 economic sense, by the conduct at issue, where                  20 the measure of harm being considered is                  21 diminution of value.                  22 And that is the difference between the                  23 price paid and the value received, you need to                  24 have information on the price paid, and then you</p>	<p style="text-align: right;">Page 108</p> <p>1 measure of damages that you described to me,                  2 that you and I have been referring to as                  3 "financial loss," which begins by looking at                  4 actual prices.                  5 Isn't that what you told me?                  6 MR. GOLDBERG: Objection to form.                  7 Mischaracterizes the record.                  8 A. I'm not sure what you're asking me.                  9 I think you're --                  10 Q. I'm asking you if it is true that you                  11 told me under oath that in looking at the                  12 financial loss model, which is the loss that                  13 comes out of your pocket, one begins by looking                  14 at, as you put it, economic circumstances, which                  15 is usually the actual price paid for something.                  16 Isn't that the starting point?                  17 MR. GOLDBERG: Objection to form.                  18 Mischaracterizes the testimony.                  19 A. For financial losses, you compare the                  20 actual economic circumstances of a class member                  21 with the economic circumstances -- the financial                  22 economic circumstances they would have                  23 experienced under some alternative.                  24 And so an input, whether it is the</p>
<p style="text-align: right;">Page 107</p> <p>1 also need information that would allow you to                  2 assess the value received.                  3 Both of those require individual                  4 information that has not been provided, or I'm                  5 not aware of, on a class-member-by-class-member                  6 basis.                  7 Q. Dr. Stiroh, we're not talking about                  8 your diminution model; we're talking about your                  9 financial outcome or financial loss model.                  10 Do you remember that?                  11 MR. GOLDBERG: Objection --                  12 Q. That's what I want to stick with.                  13 Can we do that?                  14 MR. GOLDBERG: Objection to form.                  15 Mischaracterizes the record.                  16 A. Within the financial model, the                  17 information that is not currently available on a                  18 class-member-by-class-member basis is still the                  19 amount that they actually paid for both models.                  20 One of the inputs is the actual                  21 expenditures, and we don't have that information                  22 on a class-member-by-class-member basis.                  23 Q. Ma'am, I want to direct your attention                  24 to one thing and one thing only, and that is the</p>	<p style="text-align: right;">Page 109</p> <p>1 first one or a different -- or something                  2 considered later on is what they actually paid                  3 for the product at issue.                  4 Q. That's right. What they actually paid                  5 for the product. Let's just stop there.                  6 The question I next have is: In                  7 calculating the actual price paid, isn't it true                  8 that as an economist, you can take an aggregate                  9 of the prices paid for the products in question?                  10 Yes or no?                  11 MR. GOLDBERG: Objection to form.                  12 Ambiguous.                  13 A. It depends on what your purpose is.                  14 If your purpose is to assess the                  15 aggregate expenditures, you can use an                  16 aggregate.                  17 If your purpose is to assess whether                  18 you can -- whether class members have been                  19 financially affected by the conduct under                  20 consideration, you need to evaluate the                  21 expenditures on a class-member-by-class-member                  22 basis.                  23 Q. And then the next step would be, as                  24 you described it, to look at the alternative</p>

<p style="text-align: right;">Page 110</p> <p>1 circumstance and assign a value to that;                  2 correct?                  3 A. What do you mean by "assign a value to                  4 that"?                  5 Q. Well, you tell me. We're looking at                  6 your financial loss model. We've now                  7 established the pricing and the way that you've                  8 described.                  9 How would you then arrive at a dollar                  10 value for this alternative circumstance in order                  11 to determine the loss?                  12 A. In a situation such as this one where                  13 class members can choose to take different                  14 actions --                  15 Q. I'm not asking you about this one,                  16 Doctor, respectfully. I'm not asking you about                  17 VCDs.                  18 I'm asking you about this measure,                  19 this model that we're talking about generally in                  20 economics.                  21 You've established there's a financial                  22 loss model, which is defined as what comes out                  23 of your pocket. The starting place is actual                  24 economic circumstances, typically prices paid.</p>	<p style="text-align: right;">Page 112</p> <p>1 alternative course of conduct.                  2 Q. So the two terms that I wrote down                  3 that you employed was "the actual world," and                  4 then you compare it to the "alternative course                  5 of conduct world."                  6 Did I get that right?                  7 A. Yes.                  8 Q. And you used the -- the expression                  9 "range of alternative circumstances," I think to                  10 imply that there are sometimes multiple ways to                  11 look at the alternative course of conduct world;                  12 correct?                  13 MR. GOLDBERG: Objection to form.                  14 Mischaracterizes testimony.                  15 A. There may be multiple ways to look at                  16 the alternative course of conduct world.                  17 There may also be alternatives                  18 available to purported class members for any                  19 particular characterization of the alternative                  20 course of conduct world.                  21 And in my answer, I may have used the                  22 same words to talk about two different things,                  23 but there are two points of variation:                  24 One, what does the overall alternative</p>
<p style="text-align: right;">Page 111</p> <p>1 You've established that.                  2 You've now told me that you -- the                  3 next step in this formula that you apply,                  4 economically speaking, is to determine the                  5 alternative; in other words, the economic                  6 variable in the absence of whatever conduct is                  7 that changed the world.                  8 And I'm asking you, how do you arrive                  9 at a dollar value for that to deduct it from the                  10 actual price paid?                  11 MR. GOLDBERG: Objection to form.                  12 Mischaracterizes the testimony. Asked and                  13 answered.                  14 A. In a general sense, you would consider                  15 what the range of alternatives are that are                  16 available in the absence of certain conduct,                  17 whether there is information that guides which                  18 of the alternatives class member might take up,                  19 what the costs are of those alternatives,                  20 whether there are any relevant market factors to                  21 be taken into account, and assess the                  22 differences between the financial situation of                  23 the -- call it the actual world and the                  24 financial situation of a class member under some</p>	<p style="text-align: right;">Page 113</p> <p>1 course of conduct world look like, and then                  2 within any one of those, what do consumers do?                  3 Q. What do you mean, "what do consumers                  4 do," in that sentence?                  5 A. With respect to this case, one of the                  6 things that consumers might do is choose a                  7 different medication in consultation with their                  8 doctor to manage their blood pressure.                  9 And so the economic circumstances,                  10 choosing a different medication, depend on the                  11 medication that they choose.                  12 Q. And so you would ascribe a cost to                  13 that alternative medicine in that scenario and                  14 deduct that from the actual cost that you start                  15 with; is that right, in that measure?                  16 A. From the standpoint of a consumer, I                  17 would consider the price that they paid for the                  18 medication that they are on and the price that                  19 they would have paid for an alternative                  20 medication, and the alternative medication can                  21 vary class member by class member.                  22 Q. And to go back to an example that you                  23 and I spoke about and you confirmed, if the                  24 actual price was 10 and the alternative price</p>

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1 was 8, you told me the loss is 2; right?  
2 That would be an example of what we  
3 just described; right?  
4 MR. GOLDBERG: Objection to form.  
5 A. The financial loss for a class member  
6 who paid 8 -- \$10 and would have paid a co-pay  
7 of \$8 would be 2.  
8 Q. And if we had an alternative course  
9 of --  
10 A. I'm sorry. I said that back -- I  
11 apologize. I said that backwards. And so the  
12 answer will not make sense.  
13 The other way around. If they would  
14 have paid 8 and would have paid 10 -- no. I  
15 forget now which way you asked me.  
16 The difference in financial outlays  
17 between what they did pay and what they would  
18 have paid is the measure of financial losses.  
19 Q. Dr. Stiroh, here's where I end up.  
20 If the alternate course of conduct is  
21 subject to various alternative circumstances,  
22 aren't you telling me that economically, there  
23 are multiple ways in certain circumstances to  
24 look at what you're comparing between the actual

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1 and this alternate circumstance world?  
2 It can vary; correct?  
3 MR. GOLDBERG: Objection. Ambiguous.  
4 A. The choices that consumers make can  
5 vary consumer by consumer.  
6 For an individual --  
7 Q. I haven't asked you that --  
8 MR. GOLDBERG: Counsel, don't  
9 interrupt -- Counsel, don't interrupt the  
10 witness.  
11 A. My answer was that the choices that  
12 consumers make can vary consumer to consumer.  
13 Q. Yeah. I'm asking a question about  
14 economics and about economists and models that  
15 they use.  
16 And the question I'm posing to you is,  
17 when you look at the range of alternative  
18 circumstances, figuring out if it's \$8 or \$9 or  
19 \$15 to compare to the starting place, which you  
20 said is the actual price, I'm just asking, that  
21 can vary depending upon how you look at it;  
22 correct?  
23 MR. GOLDBERG: Objection. Ambiguous.  
24 Asked and answered.

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1 A. I'm not sure what you mean by that,  
2 and it may be that I am focused more on this  
3 case and this framework than in a general sense.  
4 In this case, the frame -- the  
5 circumstances that we are considering changing  
6 is that a consumer chooses a different product.  
7 The -- depending on the product chosen  
8 and the insurance plan, if any, for the  
9 consumer, the amount they pay may differ. A  
10 different consumer for the same product may pay  
11 a different price, and a different consumer may  
12 choose a different product and also pay a  
13 different price, and all of that would have to  
14 be considered.  
15 Q. Dr. Stiroh, from an economic  
16 standpoint, you acknowledge and understand that  
17 what Dr. Conti did was a financial loss  
18 analysis; correct?  
19 A. In my view, she has done neither a  
20 diminution of value or a financial loss analysis  
21 that is consistent with economic principles.  
22 Q. Yeah. I know that's your conclusion,  
23 and I know you disagree with her in every  
24 respect.

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1 But based on what you've now told us  
2 under oath, she took the actual prices paid by  
3 consumers and insurers and compared it or  
4 deducted it from the alternative circumstance.  
5 And the alternative circumstance in  
6 Dr. Conti's economic model is that those drugs  
7 should have never been in the supply chain,  
8 which means they have a zero value.  
9 At the minimum, disagreeing as I know  
10 you do, you understand that that's what she did;  
11 correct?  
12 A. I understand that she assumed that all  
13 of the drugs at issue were worthless, and I  
14 disagree with her on that.  
15 She did not do a financial loss model  
16 because she did not consider in any  
17 circumstances the financial circumstances of  
18 consumers if they had consumed a different  
19 product.  
20 Q. That's right. Your complaint here is  
21 that there isn't an offset for a replacement or  
22 an alternative drug; correct?  
23 A. For the financial loss model, there  
24 needs to be a consideration of what consumers



<p style="text-align: right;">Page 118</p> <p>1 would have done in the absence of supply for the                  2 Valsartan at issue.                  3 Without that consideration there -- it                  4 is an incomplete model. It is not consistent                  5 with economic theory.                  6 Q. Understood. So if we take Dr. Conti's                  7 model and fix it in the way you say it needs to                  8 be fixed, we'll use this example.                  9 The actual price for the drug is \$10.                  10 She believes the comparative price in the                  11 alternative circle is zero. That means you have                  12 net 10. And you have now told us that you now                  13 have to take an alternative cost and factor that                  14 in.                  15 And so if the alternative cost is 8,                  16 the person has a \$2 loss; right?                  17 A. I'm not sure what you're asking me to                  18 agree with in that sentence.                  19 You had statements about what                  20 Dr. Conti has done or hasn't done, and then                  21 something else that needs to be added.                  22 In my view, her approach to financial                  23 losses is incomplete, because she does not                  24 consider what consumers would have purchased in</p>	<p style="text-align: right;">Page 120</p> <p>1 Valsartan-containing drugs.                  2 Q. If you were instructed by the court as                  3 a matter of law that these contaminated drugs                  4 were legally worthless, would you accept that?                  5 A. I don't know what that means.                  6 I have training and experience as an                  7 economist. And as an economist, my opinion is                  8 that it is not appropriate to say that they are                  9 worthless.                  10 If there is a legal opinion and that                  11 has legal meaning, then I'm not sure the court                  12 needs me.                  13 My opinions and my -- the report that                  14 I have written give an economic opinion and an                  15 economic assessment of the issues involved in                  16 assessing class-wide damages from the conduct at                  17 issue in this case.                  18 Q. Dr. Stiroh, I'm at a loss to                  19 understand why you say the court wouldn't need                  20 you if the court determined as a matter of law                  21 that these contaminated drugs were worthless.                  22 The court would still need an                  23 economist like you or Dr. Conti to count up the                  24 losses.</p>
<p style="text-align: right;">Page 119</p> <p>1 the absence of supply of the                  2 Valsartan-containing drugs at issue.                  3 Q. You really have two principal                  4 objections to what Dr. Conti has done.                  5 Objection Number 1 is that she has                  6 ascribed zero value or worthlessness to the                  7 contaminated drug, and in the model you and I                  8 have now been speaking about for the last                  9 half-hour she has failed to factor in the actual                  10 cost of an alternative drug; right?                  11 MR. GOLDBERG: What is the question?                  12 A. Those are among the points that I                  13 disagree with Dr. Conti's opinion.                  14 I disagree that it is appropriate from                  15 an economic standpoint to assume the products                  16 consumed are worthless.                  17 And I disagree that she has put                  18 forward a valid damage model because she neither                  19 considers the diminution of value to the                  20 products -- to the consumers based on the                  21 products that they consumed, nor does she                  22 consider a financial differences model, which                  23 would require considering what patients would                  24 have done in the alternative to consuming</p>	<p style="text-align: right;">Page 121</p> <p>1 Don't you agree?                  2 MR. GOLDBERG: Objection to form.                  3 A. I guess I don't know what the court                  4 needs and don't mean to be opining on what the                  5 court needs.                  6 I have been asked to give my opinions                  7 as an economist on certain topics related to                  8 economic loss damages and other models of                  9 economic damage assessment, and I have done                  10 that, and I don't have an opinion on what the                  11 court requires.                  12 Q. I haven't asked you that.                  13 What I have done is what I'm permitted                  14 to do, and that is to direct you to accept the                  15 hypothetical.                  16 And the hypothetical I'm asking you to                  17 accept for our -- purposes of discussion is that                  18 the drugs are economically worthless as a matter                  19 of law, and, in turn, economics, law imposing                  20 its will on economics.                  21 Under that circumstance, could you,                  22 number 1, accept that, and then calculate                  23 damages?                  24 MR. GOLDBERG: Objection to form.</p>



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1 Calls for a legal opinion. Ambiguous.  
 2 Speculation.  
 3 A. It is outside my experience for how I  
 4 as an economist have a role in various cases  
 5 where there are allegations of wrongdoing and an  
 6 assessment of harm.  
 7 Where I have participated in cases and  
 8 assessed damages, I have done my own damage  
 9 calculation by applying economic principles.  
 10 There is frequently an economist or an  
 11 accountant or somebody on the opposing side that  
 12 may do an alternative or different measure of  
 13 damages.  
 14 The -- in my experience, those models  
 15 are presented to the court and the court reaches  
 16 opinions.  
 17 Q. Well, you're confirming that you would  
 18 be incapable of accepting as a matter of fact in  
 19 your analysis that the comparative in the  
 20 alternative circumstance is zero?  
 21 You would be unable to accept that and  
 22 work with that value; correct?  
 23 MR. GOLDBERG: Objection to form.  
 24 Mischaracterize the testimony.

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1 A. In my opinion, that is not a measure  
 2 of value, and my opinions would be based, as  
 3 they are in this case, on what an economist  
 4 considers in assessing value.  
 5 Q. Doctor, take the next exhibit in your  
 6 pile that we sent you there.  
 7 MR. GOLDBERG: Ruben --  
 8 Q. I believe it's --  
 9 MR. GOLDBERG: -- if this is -- you  
 10 know --  
 11 MR. HONIK: Yes.  
 12 MR. GOLDBERG: We said we were going  
 13 to take a lunch break. We have been back  
 14 on for about an hour.  
 15 Is this a good time, or are you still  
 16 in this line of questioning?  
 17 MR. HONIK: No. I'm still in this  
 18 line of questioning.  
 19 Q. I would like you to take out, at Tab  
 20 Number 6, that document, please.  
 21 THE COURT REPORTER: Counsel, this is  
 22 the court reporter. I take it you want me  
 23 to put exhibit stickers on these as they're  
 24 produced?

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1 MR. HONIK: That would be great.  
 2 We're going to call this one Stiroh 2,  
 3 Exhibit 2.  
 4 MR. GOLDBERG: Ruben, do you have a  
 5 tile for this document? I just want to  
 6 make sure I've got the right one.  
 7 MR. HONIK: It's Judge Kugler's Motion  
 8 to Dismiss Opinion 3: Warranty Claims.  
 9 MR. GOLDBERG: Then I don't have the  
 10 right thing.  
 11 MR. HONIK: Should be attached.  
 12 (MTD Opinion 3: Warranty Claims was  
 13 marked Stiroh Exhibit 2 for identification,  
 14 as of this date.)  
 15 Q. Do you have it?  
 16 A. I have this.  
 17 Q. Okay. I'm not able to see that.  
 18 Can you verify that you're holding the  
 19 caption of this case, Judge Kugler's Motion to  
 20 Dismiss Opinion 3: Warranty Claims?  
 21 A. I do. I have it.  
 22 Q. Okay. Have you ever seen Exhibit 2  
 23 before?  
 24 A. I believe that I have.

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1 Q. Is it true that you've never seen it  
 2 before January 12, 2022?  
 3 MR. GOLDBERG: Objection to form.  
 4 Mischaracterizes the testimony.  
 5 A. It is not true to the best of my  
 6 recollection.  
 7 Q. Is it true that you didn't list this  
 8 document in your reliance materials?  
 9 A. That is correct.  
 10 Q. And you have a specific list of  
 11 reliance materials called Court Filings;  
 12 correct?  
 13 A. Correct.  
 14 Q. And this is not on that list, nor is  
 15 any other pronouncement of the court; correct?  
 16 A. Correct.  
 17 Q. I want you to turn with me to page 14  
 18 of Exhibit 2.  
 19 Are you there, Dr. Stiroh?  
 20 A. Not yet. If you just give me a  
 21 minute.  
 22 I have page 14 in front of me.  
 23 Q. If you look at the second line --  
 24 sentence of that page, of Exhibit 2, the court's

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1 opinion, it says, and I quote, The court finds  
2 that for prescription drugs, the mere  
3 identifying and marketing a drug as the generic  
4 equivalent to a branded pharmaceutical listed in  
5 the Orange Book, and then selling that generic  
6 equivalent when it contains a contaminant not  
7 included in the Orange Book listing, constitutes  
8 a breach of express warranty.  
9 Did I read that correctly?  
10 A. I believe so, yes.  
11 Q. Did you consider that finding in your  
12 analysis and the opinions in your report?  
13 A. To the best of my recollection, I had  
14 reviewed this document.  
15 It does not have a specific role for  
16 my opinions with respect to my economic  
17 conclusions regarding economic losses.  
18 Q. So whether or not there's a breach of  
19 express warranty for the reasons set out by the  
20 court did not influence or impact your opinions  
21 at all; correct?  
22 MR. GOLDBERG: Objection to form.  
23 Asked and answered.  
24 A. In my opinions evaluating the economic

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1 loss to consumers, that is correct.  
2 Q. Turn to page 20 of Exhibit 2, please.  
3 Let me know when you're there.  
4 A. I have page 20.  
5 Q. You see the second full paragraph that  
6 begins with the words, This court finds...?  
7 A. I see that.  
8 Q. The court wrote as follows, and I  
9 quote, This court finds that contaminated drugs  
10 are economically worthless at the point of sale  
11 by virtue of the dangerousness caused by their  
12 contamination, regardless whether the sold VCDs  
13 actually achieved the medical purpose of  
14 lowering blood pressure.  
15 Did I read that correctly?  
16 A. I believe so.  
17 Q. Did you consider that finding by the  
18 court anywhere in your analysis or opinions?  
19 A. I reviewed this document. I did not  
20 rely on it for reaching my opinions.  
21 My opinions are based on my training  
22 and experience as an economist, and I have  
23 reached independent opinions about the economic  
24 value of the products at issue and how to assess

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1 economic loss damages, if any.  
2 I don't know the basis for what the  
3 court takes into account. I know the basis for  
4 what I take into account in reaching that  
5 opinion.  
6 Q. Can you explain to me why you read and  
7 then ignored the court's finding that these  
8 drugs are, as it puts it, economically  
9 worthless?  
10 Why did you ignore that?  
11 MR. GOLDBERG: Objection to form.  
12 Mischaracterizes the testimony, and  
13 argumentative.  
14 A. I don't think it is right to say that  
15 I ignored it. I reviewed this document.  
16 I was asked to offer my opinion as an  
17 economist about whether economic loss damages  
18 can be determined with information and methods  
19 common to the class.  
20 I approached that in an independent  
21 manner, considering what I as an economist would  
22 review to reach an opinion about economic loss  
23 damages, and I have done that.  
24 Q. By "independent," do you mean at odds

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1 with the court?  
2 A. I do not mean at odds with the court.  
3 MR. GOLDBERG: Note my objection.  
4 Q. Do you see the sentence that follows,  
5 which reads, Put differently, contaminated  
6 drugs, even if medically efficacious for their  
7 purpose, cannot create a benefit of the bargain  
8 because the contaminants in their dangerous  
9 effects were never bargained for?  
10 Did I read that correctly?  
11 A. I believe that you did.  
12 Q. Did you consider that finding by the  
13 court in your report or any part of your  
14 analysis?  
15 A. I reviewed this document for the  
16 purposes of my report and my opinions.  
17 I consider the -- independently, the  
18 economic information that is available and reach  
19 an opinion based on my training and experience  
20 as an economist.  
21 Q. So you disagree when the court writes  
22 that the -- that the consumer didn't receive a  
23 benefit of his or her bargain?  
24 You fundamentally agree with that and

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1 believe that there was some benefit; correct?

2 MR. GOLDBERG: Objection to form.

3 Ambiguous.

4 A. I don't know what the framework is

5 that the judge takes into account in reaching a

6 legal opinion.

7 I do know what the framework is that I

8 take into account, and my economic framework

9 leads me to the opinion that it is not correct

10 to assume that the drugs were uniformly

11 worthless to all purported class members.

12 Q. But you understood that, unlike you,

13 Dr. Conti took this for what it says, that the

14 drugs are economically worthless?

15 You understand that she accepted what

16 the court found; correct?

17 A. I understand that she has assumed the

18 drugs are economically worthless, and I have

19 explained in my report why as a matter of

20 economics that is not a valid assumption to

21 make.

22 Q. But if the court hired you,

23 Dr. Stiroh, to be the court's expert and

24 directed you that the drugs were worthless, you

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1 would then ascribe the value of zero to them in

2 your financial loss model that you and I went

3 through earlier, wouldn't you?

4 MR. GOLDBERG: Objection to form.

5 Mischaracterize the testimony.

6 A. That is wholly outside my experience

7 or any work that I have ever undertaken.

8 If I were retained by the court, and I

9 have been retained by antitrust authorities, I

10 still offer an independent economic analysis

11 that may or may not comport with the legal

12 framework because the legal framework is outside

13 of my experience.

14 What the court does with that would

15 be, I think, up to the court to decide.

16 I have never in my experience been

17 told what opinion to reach and then offered that

18 opinion.

19 Q. Dr. Stiroh, respectfully, if the court

20 instructed you that the drugs in question here,

21 the VCDs in this MDL, are economically worthless

22 because of a legal principle, could you not then

23 ascribe a zero value and compute the loss

24 exactly as Dr. Conti did?

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1 MR. GOLDBERG: Objection to form.

2 Speculation.

3 A. I will say again that is just so far

4 outside my experience, that I cannot imagine

5 that scenario happening.

6 In my experience, economists are

7 brought into legal proceedings to give an

8 economist's point of view, and where I have been

9 retained, that is what I have done, including in

10 this matter.

11 I have never been asked to assume a

12 value and then asked to opine on that value.

13 I have been asked to consider whether

14 economic loss damages can be determined with

15 information common to the class, and it is my

16 opinion that economic loss damages, being the

17 difference between the price paid and the value

18 received, vary class member by class member and

19 cannot be determined with information common to

20 the class.

21 Q. Doctor, didn't you tell me earlier

22 today and write in your report that you offer no

23 legal opinions and don't venture into the legal

24 framework of what the proper measure of damages

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1 is? Didn't you tell me that?

2 MR. GOLDBERG: Objection to form.

3 Mischaracterizes the testimony.

4 A. I believe that I told you that. I

5 don't think my answer in any way differed from

6 that.

7 To the extent that there was

8 confusion, my opinions are economic opinions,

9 and I offer them in the context of economics.

10 I am not opining for the court on what

11 the appropriate legal context is.

12 Q. Dr. Stiroh, I'm not confused. I'm

13 reading your language.

14 And it says the following: I also do

15 not opine on the legal issues relating to the

16 proper measure of damages or on which measure

17 should be used.

18 Those are your words in paragraph 5 of

19 your report.

20 And so what I'm positing before we

21 break for lunch is, if the court tells you that

22 the proper measure to be used is to take the

23 actual price paid for the drug, reduce it by its

24 economic worth, which in this case is zero, and

<p>Page 134</p> <p>1 then calculate the loss, is that something you 2 could do? 3 MR. GOLDBERG: Objection to form. 4 Asked and answered. 5 A. If I were asked to perform a 6 calculation and told what numbers to sum up, I 7 could do that. 8 If I were told to call that result 9 economic losses, I would not be comfortable 10 offering that opinion because, in my opinion, 11 that summation of numbers is not economic 12 losses. 13 MR. HONIK: All right. Good time to 14 break. Let's go off the record. 15 THE VIDEOGRAPHER: The time right now 16 is 1:25 p.m. We are off the record. 17 (Luncheon recess at 1:25) 18 19 20 21 22 23 24</p>	<p>Page 136</p> <p>1 consider specifically what the proper measure of 2 damages might be, for example, for a warranty 3 base claim, correct? Do you remember telling me 4 that? 5 MR. GOLDBERG: Objection to form. 6 Mischaracterizes the testimony. 7 A. I did not opine on what the 8 appropriate measure of damages would be for a 9 warranty claim. 10 To the extent that the Court finds 11 that the work and the measures of damages that I 12 have considered are relevant, then the work that 13 I have done is relevant to those claims. 14 Q. I'm sorry, I -- I thought you started 15 out by saying that you didn't offer an opinion 16 about what the measure of damages would be for a 17 warranty claim. Is that -- that part right? 18 A. That's not what I said. I said I 19 didn't offer an opinion on what the correct 20 measure of damages would be for a warranty 21 claim. 22 I do have opinions on the economic 23 considerations and economic loss damages, or 24 damages measured as differences in financial</p>
<p>Page 135</p> <p>1 AFTERNOON SESSION 2 (2:04) 3 LAUREN J. STIROH, Ph.D., 4 resumed, having been previously duly 5 sworn by a Notary Public, was 6 examined and testified further 7 as follows: 8 THE VIDEOGRAPHER: Time now is 9 2:04 p.m. We are back on the record. 10 CONTINUED EXAMINATION BY MR. HONIK: 11 Q. Dr. Stiroh, a while before we broke 12 for lunch and we spent some time talking about 13 the two different models that you described for 14 me, namely financial loss and diminution of 15 value, I was actually asking you some questions 16 that pertain to some of the specific theories of 17 liability in this case. 18 Do you remember we talked a bit about 19 that? 20 A. Probably not with sufficient clarity. 21 To continue on that conversation, I would need 22 to hear questions again. 23 Q. Of course. And one of the things you 24 told me, or confirmed, is that you didn't</p>	<p>Page 137</p> <p>1 outcomes. 2 And to the extent that my opinions and 3 work related to those measures of damages are 4 relevant to what a Court would consider for a 5 warranty claim, then that work would apply. But 6 I have not been the person that says, This is 7 the damages for a warranty claim. 8 MR. HONIK: Jeff, can I trouble you to 9 read just the very beginning part of that 10 response? I tried to get it, but I -- I -- 11 I was exasperated and didn't get it down. 12 (The record was read back.) 13 MR. HONIK: Stop there for a minute. 14 Q. I don't think that's what you said, 15 Dr. Stiroh, is it? 16 A. It is not. 17 Q. You said you did not, that's right. 18 Jeff, she said, I did not. 19 MR. GOLDBERG: Hang on. 20 MR. HONIK: Can you read it again 21 slowly starting with, I did not offer. 22 (The record was read back.) 23 Q. Okay. Next question, you ready, 24 Dr. Stiroh?</p>



<p style="text-align: right;">Page 138</p> <p>1 Did you offer an opinion on what the                  2 correct measure of damages are for an unjust                  3 enrichment claim in this case?                  4 MR. GOLDBERG: Objection to form.                  5 Calls for a legal opinion.                  6 A. I have an understanding of what the                  7 measure of damages for unjust enrichment are,                  8 and it is expressed at least under romanette ix,                  9 on page 8 in my report.                  10 Q. What is that measure or calculation?                  11 A. I understand unjust enrichment damages                  12 to be the portion of a benefit conferred by a                  13 plaintiff on a defendant which it would be                  14 unjust for the defendant to retain.                  15 Q. Did you actually perform a calculation                  16 to determine whether or not unjust enrichment                  17 damages exist in this case?                  18 A. I have considered what Dr. Conti wrote                  19 in her report about the methods that she says                  20 she would apply to calculate unjust enrichment                  21 damages, and I have considered what she said in                  22 her deposition regarding how the variables that                  23 she thinks would be relevant, and I have                  24 opinions related to the -- what she purports to</p>	<p style="text-align: right;">Page 140</p> <p>1 your report?                  2 A. In that answer, I was referring to                  3 paragraphs 65 through 72. There is also a                  4 discussion in my summary of opinions under                  5 romanette ix, which is on page 8.                  6 Q. Do you agree that if the unjust                  7 enrichment formula or calculation used by                  8 Dr. Conti reflected profits, that the formula                  9 would then be complete according to you?                  10 A. No.                  11 The formula that Dr. Conti puts in her                  12 report, in my view, is a superficial formula of                  13 profits. She says little more than profits are                  14 revenues minus costs.                  15 Calculating unjust enrichment damages,                  16 even if starting -- if starting with profits as                  17 part of that measure, there needs to be a way of                  18 assessing what the relevant revenues are, and                  19 assessing what the relevant costs are, and in                  20 the pharmaceutical industry, both of those                  21 measures can be very complicated.                  22 There is a complex supply chain.                  23 There are differences in the business structures                  24 wholesaler to wholesaler, or retailer to</p>
<p style="text-align: right;">Page 139</p> <p>1 do, that are expressed in my report.                  2 Q. Do you have any opinions about the                  3 correct measure of unjust enrichment damages,                  4 separate and apart from whatever criticism you                  5 may have of what Dr. Conti did on unjust                  6 enrichment?                  7 A. Are you asking me do I have opinions                  8 about the quantum of unjust enrichment damages,                  9 if any, or the methods?                  10 Q. No. I'm asking you how you would                  11 measure unjust enrichment.                  12 MR. GOLDBERG: Objection to form.                  13 Ambiguous.                  14 A. In Section Roman V of my report, I                  15 have a discussion of the retail pharmacy and                  16 wholesaler damages related to plaintiff's theory                  17 of liability and unjust enrichment, and in that                  18 section, I describe my understanding of unjust                  19 enrichment damages and the flaws that I see in                  20 Dr. Conti's description of what she would do to                  21 assess unjust enrichment damages, and I explain                  22 the ways in which what she has set forward are                  23 incomplete.                  24 Q. What paragraph are you referring to in</p>	<p style="text-align: right;">Page 141</p> <p>1 retailer, such as the costs and the relevant                  2 costs for each entity might differ depending on                  3 the defendant, depending on the time period,                  4 depending on the product that is being sold, and                  5 the channel of distribution through which it                  6 reached a wholesaler and then ultimately a                  7 retailer.                  8 Q. That's your complete answer?                  9 A. Yes.                  10 Q. Dr. Stiroh, did you arrive at an                  11 opinion about the proper measure of damages for                  12 Consumer Product Act damages?                  13 MR. GOLDBERG: Objection to form.                  14 Calls for legal opinion.                  15 A. I do not offer an opinion on the                  16 correct legal framework for damages for Consumer                  17 Product Act damages.                  18 Q. Dr. Stiroh, do you offer an opinion                  19 anywhere in your report about the proper measure                  20 of damages for common law fraud?                  21 MR. GOLDBERG: Objection to form.                  22 Calls for a legal opinion.                  23 A. I do not offer an opinion on the                  24 proper legal damages for common law fraud.</p>



<p style="text-align: right;">Page 142</p> <p>1 Q. Is therapeutic benefit synonymous with                  2 economic worth, in your opinion?                  3 A. For a pharmaceutical product,                  4 therapeutic benefit is a significant component                  5 of economic worth.                  6 Q. And how do you go about measuring it?                  7 MR. GOLDBERG: Objection. Ambiguous.                  8 A. For purposes of an economic analysis                  9 that takes therapeutic benefit into account, I                  10 would consider the relative therapeutic benefits                  11 of one product compared to an alternative, and                  12 need information from a consumer, or the doctor                  13 of the consumer, that describes the                  14 alternatives.                  15 A component of damages that considers                  16 what a consumer would take in the alternative to                  17 Valsartan would have to consider what the                  18 therapeutic value of that alternative was and                  19 whether it was equivalent to the Valsartan that                  20 they took, and differences in the therapeutic                  21 value would have to be accounted for.                  22 Assessing what those differences are,                  23 would require, I think, a medical opinion, not                  24 just an economic opinion.</p>	<p style="text-align: right;">Page 144</p> <p>1 would need to be to get to the same level of                  2 blood pressure management.                  3 Q. Have you seen that input in this case                  4 from any medical experts?                  5 A. I have not seen any input in the                  6 materials that I have reviewed.                  7 Q. Have you ever had an engagement or                  8 consultation in which you had such medical input                  9 to arrive at a dollar value for therapeutic                  10 value of a prescription drug?                  11 MR. GOLDBERG: Objection. Vague.                  12 A. I have not worked on a matter that had                  13 a sufficiently similar fact profile where the                  14 measure of harm includes a potential diminution                  15 of value that comes from differences in health                  16 outcomes where that would need to be valued, but                  17 it is something that would need to be valued in                  18 this matter.                  19 Q. Have you ever so much as heard or read                  20 about a reported case, in the economic or legal                  21 literature, which done -- which has done what                  22 you just described, namely, gotten medical input                  23 in order to arrive at a dollar value for                  24 therapeutic benefit in a prescription drug?</p>
<p style="text-align: right;">Page 143</p> <p>1 Q. And in what way would you be able to                  2 translate that economic analysis into dollars                  3 and cents?                  4 How do you value that in dollars?                  5 MR. GOLDBERG: Objection. Ambiguous.                  6 A. For -- considering -- I'm sorry, I                  7 guess I need you to say what the -- what it is                  8 that you want me to value in dollars.                  9 Q. You said that therapeutic benefit,                  10 while not synonymous with economic worth, is a                  11 significant component.                  12 I'm asking you whether and how that                  13 translates or could be translated into dollars                  14 and cents.                  15 A. We know, from expenditures on the                  16 products at issue, that consumers valued the                  17 therapeutic benefits of the products at least as                  18 much as the price paid for them.                  19 The -- if there is a difference in                  20 therapeutic benefits measured, for example, by                  21 differences in the ability to manage blood                  22 pressure, then I could translate that into                  23 dollars and cents, with input from a medical                  24 expert, by considering what the expenditures</p>	<p style="text-align: right;">Page 145</p> <p>1 A. Yes. Generally, I am aware of various                  2 economic papers that look at the costs of                  3 treating certain indications and the costs of                  4 managing health outcomes. It is not a field                  5 that I specialize in.                  6 I have encountered articles depending                  7 on other cases that I have worked on that have                  8 overlapped with health sciences, but that                  9 economic concept of putting dollar values on                  10 either -- certainly on mortality, as I mentioned                  11 in my report, but the -- the costs of treating                  12 different types of medical conditions, and the                  13 costs of treating them under different                  14 approaches to controlling that medical                  15 condition, is something that I think is fairly                  16 common in health economics.                  17 Q. You don't hold yourself out to be a                  18 health economist, do you?                  19 A. I don't call myself a health                  20 economist. I am an economist that has expertise                  21 working in some industries that relate to health                  22 sciences.                  23 I would consider this case to be a                  24 matter like that, where I bring my experience as</p>

<p style="text-align: right;">Page 146</p> <p>1 an economist to a case that involves health                  2 outcomes.                  3 Q. You know, of course, that that's all                  4 Dr. Conti does, she's a health economist, don't                  5 you?                  6 A. I recall her testifying something                  7 along the lines of that is all she does.                  8 Q. And -- and you saw her bibliography in                  9 which she authored literally hundreds of papers                  10 and other contributions to the literature in                  11 health economics. Right?                  12 A. I have read her report. I have to say                  13 I'm not sure I paged through her bibliography                  14 ever, but I take your word for it.                  15 Q. Do you agree that equilibrium price                  16 from a classical economic standpoint is set by                  17 the intersection of supply and demand?                  18 A. I do.                  19 Q. And do you agree that according to                  20 economic theory, for a consumer product -- and                  21 we're talking generally -- for a consumer                  22 product to have economic value, demand for the                  23 product must exist and supply must be allowed to                  24 meet that demand?</p>	<p style="text-align: right;">Page 148</p> <p>1 involved in this case, and my expertise is in                  2 economics and I have focused my analysis on                  3 materials that are relevant to my economic                  4 analyses.                  5 Q. In listing your various reliance                  6 materials, unless I missed it, I -- I do not                  7 note your having relied on any of the U.S. Code                  8 as it pertains to the introduction of drugs into                  9 the supply chain. Have you?                  10 A. I do not rely on any of the U.S. Code                  11 as it pertains to the introduction of drugs into                  12 the supply chain for the purposes of my opinions                  13 that I'm offering in this report.                  14 Q. Are you -- are you, nonetheless,                  15 familiar with any aspects of federal law as it                  16 concerns the ability for a drug manufacturer to                  17 introduce into the legal class of trade a                  18 prescription drug?                  19 A. I have some familiarity with the                  20 regulations concerning transactions in                  21 pharmaceuticals, and entry of either new                  22 pharmaceutical products or generic                  23 pharmaceutical equivalents to existing                  24 pharmaceutical products.</p>
<p style="text-align: right;">Page 147</p> <p>1 A. I disagree.                  2 Q. I didn't see among your reliance                  3 materials your having relied upon -- unless I                  4 missed it -- with the exception, I think, of                  5 Dr. Chan, you -- you didn't read any of the                  6 defense class experts in this case. Have you?                  7 A. My team and I have reviewed the expert                  8 reports that are listed in paragraph 6. I don't                  9 recall others and certainly not that I have                  10 reviewed, if there are -- I just don't think                  11 that I have, no.                  12 Q. Did you review the defense class                  13 expert report prepared by Dr. Lambert, who is                  14 both a Ph.D. chemist, an expert in the                  15 pharmaceutical supply chain, a cGMP, and CMC                  16 expert?                  17 A. I don't believe so.                  18 Q. Do you understand that in this case,                  19 there are any number of pharmacy industry                  20 experts with a variety of expertise in how the                  21 supply chain works, how cGMP compliance occurs,                  22 how CMC occurs, how FDA regulations impact this                  23 case? Are you aware of that generally?                  24 A. I'm aware that there are more experts</p>	<p style="text-align: right;">Page 149</p> <p>1 I have familiarity based on my prior                  2 work, but it is not something that I am                  3 intending to put forward opinions related to.                  4 Q. And certainly in this case, you didn't                  5 rely upon any of those laws or regulations in                  6 forming your opinions here, correct?                  7 A. That is correct.                  8 Q. Do you -- do you disagree that those                  9 laws have an impact on determining whether                  10 there's a legitimate supply curve for a                  11 particular prescription drug?                  12 MR. GOLDBERG: Objection to form.                  13 Ambiguous.                  14 A. Can you say how you are using the                  15 phrase, "legitimate supply curve"?                  16 Q. Sure. Do you think that there are any                  17 laws that impact the ability of a manufacturer                  18 to sell a drug in interstate commerce?                  19 A. My understanding is that there are.                  20 Q. And what impact, so far as you                  21 understand, would those laws have on                  22 determining, from an economic standpoint, the                  23 legitimacy of producing a supply of a                  24 prescription drug and, in turn, having a supply</p>

<p>Page 150</p> <p>1 curve?</p> <p>2 MR. GOLDBERG: Objection to form.</p> <p>3 Ambiguous.</p> <p>4 A. With respect to this case, are you</p> <p>5 asking me?</p> <p>6 Q. No.</p> <p>7 MR. GOLDBERG: Same objection.</p> <p>8 A. I am aware that there are consumers in</p> <p>9 the United States who seek to buy prescription</p> <p>10 drugs outside of the United States for</p> <p>11 consumption inside the United States.</p> <p>12 That is a -- from an economic point of</p> <p>13 view, that is supply of a product that could be</p> <p>14 taken into account in doing an economic analysis</p> <p>15 of supply and demand.</p> <p>16 Q. Are you familiar with the drug now</p> <p>17 long banned called fen-phen?</p> <p>18 A. I am not.</p> <p>19 Q. That was a prescription diet drug that</p> <p>20 caused a certain type of heart damage, that's</p> <p>21 been long banned in the United States.</p> <p>22 Do you have an opinion, as an</p> <p>23 economist, what the value of that drug is, if</p> <p>24 I'm not able to get it lawfully here?</p> <p>Page 151</p> <p>1 A. I don't have a fully formed opinion</p> <p>2 because I have never considered this scenario</p> <p>3 before.</p> <p>4 The components of value, though, if it</p> <p>5 is something that you desire to get,</p> <p>6 notwithstanding the fact that you can't get it</p> <p>7 here, that tells me, as an economist, it has</p> <p>8 value to you as a consumer.</p> <p>9 Q. Your -- your economic opinion is that</p> <p>10 if it's unlawful for me to obtain, and no doctor</p> <p>11 will give me a prescription, that fen-phen still</p> <p>12 has some dollar value. Is that your opinion?</p> <p>13 A. My opinion is that if you want it, or</p> <p>14 a consumer wants it, that product has value to</p> <p>15 you.</p> <p>16 Q. Let me ask the question differently.</p> <p>17 In my hypothetical for fen-phen, is it lawful</p> <p>18 for someone to sell it, a manufacturer, and</p> <p>19 receive money for it?</p> <p>20 A. I don't know. That -- you're asking</p> <p>21 me now a legal opinion. And my opinions are</p> <p>22 rooted in economics, and economic value comes</p> <p>23 from somebody wanting a product.</p> <p>24 Q. Well, respectfully, Dr. Stiroh, you</p>	<p>Page 152</p> <p>1 don't limit your views in this case to purely</p> <p>2 economic principles. Your essential thesis here</p> <p>3 is that class certification isn't available.</p> <p>4 That's a legal question, isn't it?</p> <p>5 MR. GOLDBERG: Objection to form.</p> <p>6 A. Can you say again what my fundamental</p> <p>7 opinion is?</p> <p>8 Q. Sure. You're familiar with Rule 23 of</p> <p>9 the Federal Rules of Civil Procedure, aren't</p> <p>10 you?</p> <p>11 A. I am.</p> <p>12 Q. You -- you've written on that, haven't</p> <p>13 you?</p> <p>14 A. I have written on the economics of it.</p> <p>15 Q. Well, you've written specifically</p> <p>16 about case law, haven't you?</p> <p>17 A. I have written specifically about</p> <p>18 various cases, but it is -- my writings are</p> <p>19 related to the economics that were used in the</p> <p>20 cases and considered by the court.</p> <p>21 Q. Dr. Stiroh, your writings relate to</p> <p>22 the interplay between the class certification</p> <p>23 rule, Rule 23, and economics, extensively,</p> <p>24 haven't you?</p> <p>Page 153</p> <p>1 A. I have written on the economics of</p> <p>2 class certification, and I agree with you that</p> <p>3 class certification is something that takes</p> <p>4 place in a legal context.</p> <p>5 Q. That's a -- that's a very curious way</p> <p>6 to put it, because, you know, as I read your</p> <p>7 opinions, you write for -- just for example,</p> <p>8 Economic loss damages to members of the consumer</p> <p>9 or third-party payor classes, if any, cannot be</p> <p>10 assessed on a class-wide basis using information</p> <p>11 and methods common to the proposed class.</p> <p>12 Is that your language?</p> <p>13 A. It is.</p> <p>14 Q. And I gather you've probably written</p> <p>15 that sentence numerous times before, right?</p> <p>16 MR. GOLDBERG: Objection to form.</p> <p>17 Ambiguous.</p> <p>18 A. I have not.</p> <p>19 Q. "Methods common to the proposed</p> <p>20 class," is that an economic phrase or a legal</p> <p>21 phrase?</p> <p>22 A. It may be a legal phrase. In my</p> <p>23 sentence when I said that the class-wide</p> <p>24 damages, from my perspective, that aspect, is</p>
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<p style="text-align: right;">Page 154</p> <p>1 the economic part of it, whether the same words                  2 would be used in a legal context or not.                  3 Q. "Cannot be assessed on a class-wide                  4 basis," is that a legal phrase or an economics                  5 phrase?                  6 A. It is the same answer I just gave you.                  7 My assignment, as described in my report, was to                  8 consider whether economic damages where I                  9 have -- or economic harm, where it is -- I have                  10 defined what I understand that to mean, can be                  11 assessed on a class-wide basis, and that has                  12 meaning to me as an economist, but my answer,                  13 then, to the question is rooted in economics,                  14 and it is an economic finding, not a legal one.                  15 Q. What does class-wide basis mean?                  16 A. As I use it, it means for the class as                  17 a whole.                  18 Q. And how is that different in your                  19 mind, as you use it, from individual basis?                  20 A. An individual basis would be to an                  21 individual class member, and class-wide basis is                  22 to the class as a whole.                  23 Q. Is that the extent of your                  24 understanding?</p>	<p style="text-align: right;">Page 156</p> <p>1 context of responding to a commonality argument.                  2 The work that I do is based on                  3 economics and then is used by a legal team in                  4 the legal context in whatever way they feel is                  5 most appropriate based on their experience and                  6 understanding.                  7 Q. Yeah, that's not really what I'm                  8 asking you. I'm simply asking if we can agree                  9 that the shorthand way to refer to your                  10 application of economic principles to this                  11 aspect of class certification that you've been                  12 speaking at length about is referred to as                  13 commonality. That's all I'm asking.                  14 MR. GOLDBERG: Objection --                  15 Q. Do you agree with that?                  16 MR. GOLDBERG: Objection to form,                  17 asked and answered. Calls for a legal                  18 opinion.                  19 A. I guess I don't know that to be true                  20 in all cases. Or even in this one.                  21 I have an understanding that if the                  22 lawyers or the court is considering whether                  23 there is a predominance of common issues, that                  24 an economist's report and opinions may factor</p>
<p style="text-align: right;">Page 155</p> <p>1 A. Sufficient to answer your question,                  2 yes. To the extent that you will expand the                  3 context, I may have a different answer, but in                  4 the context in which I understood you to ask it,                  5 that is the --                  6 Q. Do you understand --                  7 A. If I could just finish the answer so                  8 it makes sense.                  9 MR. GOLDBERG: Hang on, Ruben. She's                  10 not finished the answer.                  11 Q. Let me know when you're done.                  12 THE WITNESS: I'm sorry. If you could                  13 just mark that my answer was incomplete,                  14 there, that would be good. I don't -- I've                  15 lost my train of thought for it.                  16 Q. Are you addressing what's commonly                  17 referred to as the commonality requirement, in                  18 the sentence we just went over?                  19 MR. GOLDBERG: Objection to form.                  20 Calls for a legal opinion.                  21 A. I have an understanding that when                  22 doing work related to the class certification                  23 phase of a litigation, that the work that I do                  24 is most frequently used by the legal team in the</p>	<p style="text-align: right;">Page 157</p> <p>1 into the legal opinions on that subject.                  2 Q. Now you've introduced another legal                  3 term, "predominance." Do you know what that                  4 means?                  5 MR. GOLDBERG: Objection to form.                  6 Calls for a legal opinion.                  7 A. I understand it is a term that is                  8 included in class certification findings, and I                  9 have an understanding, from a layperson, of what                  10 that means. I don't -- wouldn't say I have a                  11 legal understanding, because I'm not a lawyer.                  12 Q. Well, you do understand, though, don't                  13 you, that this issue, or business of                  14 commonality, needs to apply, on the one hand, to                  15 liability issues, and on the other hand, to                  16 damage issues. Do you understand that much?                  17 MR. GOLDBERG: Objection to form.                  18 Calls for a legal opinion.                  19 A. I have an understanding that a court                  20 may consider whether the liability theories and                  21 defenses are common to the class, and a court                  22 may consider whether there are individual issues                  23 and potentially weigh the common issues against                  24 the individual issues to assess from a legal</p>

<p style="text-align: right;">Page 158</p> <p>1 perspective which ones dominate.</p> <p>2 Q. You do understand that they fall into</p> <p>3 two buckets, right? That you have to</p> <p>4 demonstrate this commonality concept on</p> <p>5 liability, and separately for damages. Do you</p> <p>6 get that?</p> <p>7 MR. GOLDBERG: Objection. Calls for a</p> <p>8 legal opinion.</p> <p>9 A. I don't -- I don't get that from an</p> <p>10 economic perspective. I work on class</p> <p>11 certification matters where I have an assignment</p> <p>12 that I carry out, and then whether that is used</p> <p>13 by the legal term to assess common issues on</p> <p>14 liability or common issues with respect to</p> <p>15 damages, that is up to the legal team.</p> <p>16 Q. Do you agree that whether the</p> <p>17 manufacturers in this case who have produced the</p> <p>18 VCDs adhere to cGMP in making them is a --</p> <p>19 presents a common question of fact or law?</p> <p>20 MR. GOLDBERG: Objection to form.</p> <p>21 Calls for a legal opinion.</p> <p>22 A. I don't have an opinion on that.</p> <p>23 Q. Do you have an opinion whether</p> <p>24 nitrosamines, a probable human carcinogen, can</p>	<p style="text-align: right;">Page 160</p> <p>1 to form. Calls for a legal opinion.</p> <p>2 A. I don't have an opinion on that.</p> <p>3 Q. Do you -- do you know whether it's a</p> <p>4 common question of fact or law whether the VCDs</p> <p>5 were adulterated within the meaning of the</p> <p>6 Federal Food, Drug, and Cosmetic Act?</p> <p>7 MR. GOLDBERG: Objection to form.</p> <p>8 Calls for a legal opinion.</p> <p>9 A. I don't have an opinion on that. I</p> <p>10 have an understanding that not all of the drugs</p> <p>11 at issue or all of the lots of the drugs at</p> <p>12 issue may have contained any of the impurities</p> <p>13 at issue, and I have a discussion of what that</p> <p>14 means for Dr. Conti's opinions. I don't have an</p> <p>15 opinion as to the facts surrounding that issue.</p> <p>16 Q. Do you disagree that it's a common</p> <p>17 question of fact or law to determine whether the</p> <p>18 VCDs in question were misbranded?</p> <p>19 MR. GOLDBERG: Objection to form.</p> <p>20 Calls for a legal opinion.</p> <p>21 THE WITNESS: Did he ask me do I have</p> <p>22 an opinion or understanding? Can you</p> <p>23 repeat. Or sorry.</p> <p>24 Q. I asked you if you agree --</p>
<p style="text-align: right;">Page 159</p> <p>1 present a common question of fact or law?</p> <p>2 MR. GOLDBERG: Objection to form.</p> <p>3 Calls for a legal opinion.</p> <p>4 A. I don't have an opinion on that.</p> <p>5 Q. Do you have an opinion whether it's a</p> <p>6 common question of fact or law whether the VCDs</p> <p>7 in this case were contaminated with NDMA or</p> <p>8 NDEA?</p> <p>9 MR. GOLDBERG: Objection to form.</p> <p>10 Calls for a legal opinion.</p> <p>11 A. I don't have an opinion on that. I</p> <p>12 consider in my report the possibility that not</p> <p>13 all products included the impurities NDMA and</p> <p>14 NDEA in quantities that have been alleged to</p> <p>15 cause an increase in the risk of cancer, and I</p> <p>16 have opinions that stem from the -- or that --</p> <p>17 that talk about how that interplays with the</p> <p>18 economic outcomes.</p> <p>19 Q. Do you agree that it's a common</p> <p>20 question of fact or law whether the defendant</p> <p>21 manufacturers in this case were aware, or should</p> <p>22 have been aware, of the potential for</p> <p>23 nitrosamine formation prior to 2018?</p> <p>24 MR. GOLDBERG: Objection. Objection</p>	<p style="text-align: right;">Page 161</p> <p>1 A. Oh.</p> <p>2 Q. -- that whether or not the VCDs in</p> <p>3 question here are misbranded is a common</p> <p>4 question of law or fact.</p> <p>5 MR. GOLDBERG: Again, object to form.</p> <p>6 Calls for a legal opinion.</p> <p>7 A. I don't think I even understand how</p> <p>8 your question is constructed. Whether --</p> <p>9 whether I'm being asked to agree with the</p> <p>10 statement, or being asked to agree that the</p> <p>11 issue is a common issue.</p> <p>12 I don't have an opinion, I think, on</p> <p>13 either. But I will say I don't think I</p> <p>14 understood the question.</p> <p>15 Q. Dr. Stiroh, the fact is, you don't</p> <p>16 question that there are common questions of fact</p> <p>17 and law that would support certifying a class on</p> <p>18 liability grounds. Correct?</p> <p>19 MR. GOLDBERG: Objection to form.</p> <p>20 Calls for a legal opinion.</p> <p>21 A. I don't offer opinions on that. I</p> <p>22 have opinions in my report related to the</p> <p>23 assignment I was asked to undertake.</p> <p>24 And the assignment was to consider</p>



<p style="text-align: right;">Page 162</p> <p>1 whether damages from economic losses or                  2 differences in financial outcomes can be                  3 determined with information common to the class,                  4 and it is my opinion that they cannot be                  5 determined with information common to the class,                  6 and you would need individualized information                  7 for -- from purported class members.                  8 Q. Right. You said that multiple times.                  9 And the reason for that is because according to                  10 you, you'd have to value the therapeutic benefit                  11 on the one hand, and the various risk factors                  12 that can only be viewed through the individual                  13 consumer. Right?                  14 MR. GOLDBERG: Objection to form.                  15 Mischaracterizes the testimony.                  16 A. That is one of the reasons why you                  17 need individual information.                  18 Q. I'm sorry, you're saying I'm correct?                  19 A. Your full statement was not correct,                  20 but I do agree with you that you have stated                  21 some of the reasons why you would need                  22 individual information to properly assess                  23 damages in this matter from an economic                  24 standpoint.</p>	<p style="text-align: right;">Page 164</p> <p>1 the reasons you've written and we've talked                  2 about, but if it turns out that the measure of                  3 damages is financial loss, in the way you've                  4 outlined to me, and you assume or accept that                  5 the value of these drugs is zero, then one                  6 could, quite readily, with common evidence,                  7 proof, arrive at damages. Correct?                  8 A. I disagree. If the measure of damages                  9 is determined to be financial loss, and thus, as                  10 we discussed this morning, you compare the                  11 financial position of class members as they were                  12 and the financial positions as they would have                  13 been had they not consumed the at-issue VCDs,                  14 you have to consider, Are there other variables                  15 that change.                  16 The other variable that would change                  17 is what product would they consume instead of                  18 the VCD to manage their blood pressure. That is                  19 what is missing from what Dr. Conti did.                  20 If you assume away or say that there                  21 would not be any management of blood pressure,                  22 then the comparison of situations at -- as they                  23 are, and the situations as they would be, would                  24 have to consider what happens to patients if</p>
<p style="text-align: right;">Page 163</p> <p>1 Q. Yeah. Before we broke for lunch, and                  2 you and I looked together at what Judge Kugler                  3 wrote about the economic worthlessness of the                  4 drug and the concept that the drugs were worth                  5 zero because of the failure of the benefit of                  6 the bargain, you don't disagree that if that                  7 ends up being the measure of damages, that that                  8 subject is subject to common proof, do you?                  9 MR. GOLDBERG: Objection to form.                  10 Mischaracterizes the testimony. Calls for                  11 a legal opinion.                  12 A. Can you say it again, or may I ask the                  13 court reporter to repeat that question.                  14 Q. Sure. Judge Kugler is correct that                  15 the drugs are economically worthless for the                  16 reasons you and I looked at together and,                  17 therefore, have a value of zero that, arising in                  18 class damages, is a simple matter of common                  19 proof. Correct?                  20 A. I don't agree with you.                  21 MR. GOLDBERG: And note my objection                  22 as calling for a legal opinion.                  23 Q. Well, I know that you don't agree with                  24 the premise and the foundation for that, for all</p>	<p style="text-align: right;">Page 165</p> <p>1 they stop taking blood pressure medication, and                  2 do they have adverse health outcomes that then                  3 would also have different financial outlays than                  4 they currently did when their blood pressure was                  5 managed.                  6 Q. Dr. Stiroh, are you aware that in the                  7 marketplace when these contaminated drugs were                  8 sold, and afterwards, that there were                  9 uncontaminated generic forms of Valsartan                  10 available? Are you aware of that?                  11 A. I am aware that there are other forms                  12 of Valsartan that are not alleged to have the                  13 impurities, yes.                  14 Q. And you are aware that in addition to                  15 these uncontaminated generic forms of Valsartan,                  16 there were a whole host of other ARBs, drugs of                  17 this class, that control blood pressure,                  18 correct --                  19 A. I'm aware of that --                  20 Q. -- available to consumers?                  21 And you are aware that there were also                  22 branded or innovator drug -- drugs available to                  23 treat these conditions as well, correct?                  24 A. I am aware of the presence of other</p>

<p style="text-align: right;">Page 166</p> <p>1 ARBs and the presence of a branded Valsartan                  2 product.                  3 Q. Do you agree with the statement that                  4 when these drugs were sold between 2012 and                  5 their removal from the market in 2018, the                  6 contaminated forms of it, that no consumer was                  7 aware if the drugs were contaminated?                  8 A. Did you ask me if I am aware of that                  9 or I agree with that?                  10 Q. Is there a difference for you?                  11 A. I think if you asked me if I'm aware,                  12 you are stating a fact that I'm -- I don't know                  13 to be true.                  14 And if you're asking me if I am                  15 aware -- if -- well, either way, I don't know                  16 that it is true about what consumers understood                  17 to be included in their Valsartan-containing                  18 drugs as I sit here today.                  19 Q. Do you have any facts or evidence to                  20 share with us under oath that any consumer,                  21 between 2012 and 2018, had any basis to                  22 understand that their Valsartan contained                  23 nitrosamines?                  24 A. That is not a subject on which I am</p>	<p style="text-align: right;">Page 168</p> <p>1 purposes of my report.                  2 Q. Well, I want you to assume in a                  3 hypothetical that that is what they claim.                  4 And I want to then ask you, on the                  5 basis of that assumed fact, if it's conceivable                  6 to you that the manufacturers didn't know there                  7 were nitrosamines in their Valsartan pills, but                  8 you believe that consumers might have known that                  9 fact. Is that your statement?                  10 MR. GOLDBERG: Objection to form.                  11 Argumentative.                  12 A. That is not my statement.                  13 Q. Okay. Let me ask you a different                  14 question.                  15 Can you -- do you believe, as a matter                  16 of economics, that if there's a binary choice                  17 given to a consumer to buy, in this case, with                  18 knowledge, a VCD that's contaminated with a                  19 carcinogen and the exact same VCD that is                  20 uncontaminated with any carcinogen, that there's                  21 any consumer who would rationally select the                  22 contaminated one?                  23 A. I could envision a scenario in which                  24 that happens, yes.</p>
<p style="text-align: right;">Page 167</p> <p>1 offering testimony. I don't have information to                  2 share with you as I sit here today on that                  3 subject.                  4 Q. Do you think for a split second that a                  5 single consumer knew about it and none of the                  6 manufacturers did? Because that's what they                  7 claim, you know.                  8 MR. GOLDBERG: Object- --                  9 Q. You know that, right?                  10 MR. GOLDBERG: Objection to form.                  11 Foundation. Argumentative.                  12 A. Are you asking do I know what is                  13 claimed by manufacturers?                  14 Q. Are you aware that the manufacturers,                  15 uniformly in this case, claim that they didn't                  16 know and couldn't know of the presence of                  17 nitrosamines in their own products during the                  18 relevant class period? Are you aware of that?                  19 A. I don't think --                  20 MR. GOLDBERG: Objection to form.                  21 A. -- I have reviewed information that --                  22 or at least that I recall as I sit here, on what                  23 the defendant manufacturers are stating. It is                  24 not something that I recall reviewing for</p>	<p style="text-align: right;">Page 169</p> <p>1 Q. Okay. Can you tell us, under oath, in                  2 what scenario would a rational person pick the                  3 contaminated VCD.                  4 A. A scenario in which that may happen is                  5 if the VCD that contains impurities is priced                  6 lower than the VCD with -- without impurities,                  7 and a consumer, in consultation with their                  8 doctor, is informed that the level of impurities                  9 is not likely to change their health comes --                  10 health outcomes in any meaningful way, that a                  11 consumer may decide to save money by choosing a                  12 product that has impurities in it.                  13 Q. Do you know facts that support that                  14 having occurred here ever?                  15 A. I have examples in my report where I                  16 talk about similar types of comparisons where                  17 consumers choose between organic products and                  18 products that contain pesticides, where                  19 pesticides may include elements that could have                  20 risks for human health outcomes.                  21 And consumers make different choices                  22 in different scenarios, but we can observe                  23 market differences in prices. We observe                  24 organic vegetables being sold, and we observe</p>

<p style="text-align: right;">Page 170</p> <p>1 vegetables that have been exposed to pesticides                  2 being sold.                  3 I have an example where economists                  4 have measured differences in housing prices,                  5 where houses are located in an area where there                  6 is a higher incidence of leukemia than other                  7 areas, and economists can observe and measure                  8 the differences in prices that would be                  9 attributable to the added risk in one geographic                  10 area to another geographic area.                  11 The section in my report that                  12 describes other examples of where economists                  13 have measured and priced risk I have in my                  14 report as an indication that economists do look                  15 at these types of things.                  16 The presence of risk doesn't render a                  17 product worthless. The presence of risk has                  18 been measured by economists in other factors.                  19 It's not appropriate to make the assumption that                  20 Dr. Conti did. It's not appropriate to assume                  21 worthlessness because of the presence of a risk.                  22 Q. In order to price the presence of a                  23 risk, doesn't a consumer need to know that the                  24 risk exists?</p>	<p style="text-align: right;">Page 172</p> <p>1 it, correct?                  2 A. To do an economic study and draw the                  3 conclusion that a price differential is due to                  4 risk, you would have built into that some                  5 expectation regarding information that is known                  6 about the risks.                  7 Q. Have you seen a single shred of                  8 evidence in this case that any consumer, during                  9 the relevant class period, proposed class                  10 period, was aware of the presence of                  11 nitrosamines in these Valsartan-containing                  12 drugs?                  13 A. I am not aware of any information that                  14 indicates that.                  15 Q. Let's bring up -- go into your                  16 document if you would, and pull up -- just find                  17 it -- bear with me. It's a -- it should be a                  18 Tab 3. And it's a section of the United States                  19 Code.                  20 MR. GOLDBERG: Is this 331 or 351?                  21 MR. HONIK: 331.                  22 MR. GOLDBERG: Okay.                  23 (Prohibited Acts, 21 USCA, Section                  24 331, was marked Stiroh Exhibit 3 for</p>
<p style="text-align: right;">Page 171</p> <p>1 A. In the examples that I gave you, I was                  2 envisioning that the economist prices the risk.                  3 The -- whether the consumer prices the                  4 risks, there are examples where the consumer                  5 could know about a risk, and in those scenarios,                  6 we can see a divergence in price and consumption                  7 patterns of products that are deemed more or                  8 less risky.                  9 Q. Dr. Stiroh, respectfully, you didn't                  10 answer my question. In order for either a                  11 consumer or an economist, on an assumption, to                  12 price or place a value on risk, to exercise that                  13 choice, you have to have knowledge of the risk,                  14 do you not?                  15 MR. GOLDBERG: Objection to form.                  16 Ambiguous.                  17 A. To price the risk, an economist would                  18 have an understanding or an assumption regarding                  19 the risk profile, yes.                  20 Q. That's right. In order to                  21 affirmatively choose to live in an area with                  22 high leukemia because of environmental factors,                  23 you'd have to know about that risk in order to                  24 take it or assume it or exercise a choice around</p>	<p style="text-align: right;">Page 173</p> <p>1 identification, as of this date.)                  2 Q. Dr. Stiroh, do you have what's been                  3 marked as Exhibit 3?                  4 Dr. Stiroh, have you ever laid eyes on                  5 21 United States Code Annotated Section 331?                  6 A. I don't have a particular recollection                  7 of it. I may have seen it before.                  8 Q. Do you see at the top, it's part of                  9 the Federal Food, Drug, and Cosmetic Act?                  10 Do you see that?                  11 A. I see a heading, Chapter 9, Federal                  12 Food, Drug, and Cosmetic Act, is that what                  13 you're referring me to?                  14 Q. Yes, ma'am. And underneath it, it                  15 should say Subchapter 3, Prohibited Acts and                  16 Penalties.                  17 Do you see that?                  18 A. I do.                  19 Q. And the construct for this, as a                  20 prohibited act piece of litigation, is to set                  21 out what's prohibited.                  22 You see where it says, The following                  23 acts and the causing thereof are prohibited,                  24 colon?</p>

<p style="text-align: right;">Page 174</p> <p>1 You see that?</p> <p>2 A. I do.</p> <p>3 Q. And the very first prohibited act</p> <p>4 that's listed is as follows: The introduction</p> <p>5 or delivery for introduction into interstate</p> <p>6 commerce, of any food, drug, device, tobacco</p> <p>7 product or cosmetic that is adulterated or</p> <p>8 misbranded.</p> <p>9 Did I read that correctly?</p> <p>10 A. I believe you did.</p> <p>11 Q. Have you ever seen this statement</p> <p>12 in -- in the -- in federal law?</p> <p>13 A. I don't think I have set out to read</p> <p>14 federal law. The statement sounds familiar from</p> <p>15 Dr. Conti's materials. I may have seen it in</p> <p>16 this context as well, but I don't have a</p> <p>17 recollection of having reviewed this document.</p> <p>18 Q. Suffice to say you didn't give any</p> <p>19 weight or consideration to this prohibited act</p> <p>20 as set out in 21 USCA Section 331?</p> <p>21 A. I don't think that is accurate to say</p> <p>22 that I didn't give it weight. I didn't -- don't</p> <p>23 recall having reviewed this particular document.</p> <p>24 To the extent that it is something</p>	<p style="text-align: right;">Page 176</p> <p>1 adulterated drug can't be introduced into</p> <p>2 interstate commerce in the U.S., that that means</p> <p>3 such a drug, namely an adulterated drug, cannot</p> <p>4 have a legitimate supply curve in our market?</p> <p>5 MR. GOLDBERG: Objection to form,</p> <p>6 ambiguous.</p> <p>7 A. I have an understanding of what</p> <p>8 Dr. Conti was seeking to do when she removed the</p> <p>9 supply curve and called that legitimate supply.</p> <p>10 I have a discussion in my report about economic</p> <p>11 loss damages and that her analysis does not</p> <p>12 establish worthlessness.</p> <p>13 Whether there is a supply of product</p> <p>14 that the U.S. court allows, that is not the same</p> <p>15 as measuring the worth or value of drugs. The</p> <p>16 worth or value of drugs to consumers depends on</p> <p>17 their valuation of the products, not the supply</p> <p>18 of the products.</p> <p>19 I disagree with Dr. Conti on that</p> <p>20 point.</p> <p>21 Q. Did you hear me invoke Dr. Conti's</p> <p>22 name or any of her findings in my question,</p> <p>23 Dr. Stiroh?</p> <p>24 A. I don't recall if you said it. It is</p>
<p style="text-align: right;">Page 175</p> <p>1 that factors into Dr. Conti's opinions, I --</p> <p>2 that is something that I consider explicitly in</p> <p>3 my report.</p> <p>4 Q. This prohibits legally introducing,</p> <p>5 into the legal class of trade, an adulterated or</p> <p>6 misbranded product. Correct?</p> <p>7 MR. GOLDBERG: Objection. Calls for a</p> <p>8 legal opinion.</p> <p>9 A. I can see what the words are. I can't</p> <p>10 give you an opinion on what this prohibits or</p> <p>11 doesn't prohibit. I'm not a lawyer.</p> <p>12 Q. Doctor, you have a Ph.D. from Harvard</p> <p>13 in economics. Can you apply a plain meaning to</p> <p>14 what we read together sufficient to understand</p> <p>15 and agree that it prohibits introducing</p> <p>16 adulterated drugs in interstate commerce in the</p> <p>17 United States?</p> <p>18 MR. GOLDBERG: Same --</p> <p>19 Q. Can you draw that meaning from it?</p> <p>20 MR. GOLDBERG: Same objection.</p> <p>21 A. I can draw the plain English meaning</p> <p>22 from the words. I cannot give you a legal</p> <p>23 opinion related to it.</p> <p>24 Q. Would you agree that because an</p>	<p style="text-align: right;">Page 177</p> <p>1 relevant to my answer because my assignment in</p> <p>2 this case was to consider her opinions.</p> <p>3 Q. I'm not talking about your assignment</p> <p>4 now. I've asked you a profoundly simple</p> <p>5 question.</p> <p>6 And that is, as an economic principle,</p> <p>7 how can you have a legitimate supply curve of a</p> <p>8 product that is, by law, prohibited from</p> <p>9 entering interstate commerce?</p> <p>10 MR. GOLDBERG: Objection to form.</p> <p>11 Ambiguous.</p> <p>12 A. As a matter of economics, you could</p> <p>13 have a supply curve if there is supply of the</p> <p>14 product. What I take you to mean by "legitimate</p> <p>15 supply" is supply of a product that meets</p> <p>16 certain requirements.</p> <p>17 My understanding is that there was</p> <p>18 supply of VCDs that met those requirements, and</p> <p>19 the question is whether there -- the absence of</p> <p>20 supply from defendants causes products to be</p> <p>21 worthless.</p> <p>22 Q. You agree, if we were constructing,</p> <p>23 economically speaking, as you do all the time,</p> <p>24 and appropriately so, a but-for world in which</p>



<p style="text-align: right;">Page 178</p> <p>1 there's compliance with the law, and                  2 specifically this prohibition of introducing                  3 into interstate commerce adulterated drugs, that                  4 in that but-for world, there is no legitimate                  5 supply curve, correct?                  6 A. I don't think that's correct. I think                  7 you -- if you assume that the drugs that are                  8 alleged to have impurities are not part of the                  9 market, if you assume them away, there is still                  10 supply of other Valsartan-containing drugs.                  11 Q. You agree that if all of VHP's drug                  12 products were adulterated, that none of them                  13 could lawfully be in the U.S. legal class of                  14 trade. Correct?                  15 MR. GOLDBERG: Objection to form.                  16 Calls for a legal opinion.                  17 A. I don't know if I agree with that or                  18 not. The facts that I take into account for my                  19 report is that there were supply of drugs, there                  20 were purchases of drugs, and I consider the                  21 value of those drugs and how the value might be                  22 diminished if consumers knew that there were                  23 impurities in them.                  24 It's a framework that I have worked</p>	<p style="text-align: right;">Page 180</p> <p>1 the totality of these two statements means that                  2 you can't introduce adulterated drugs into the                  3 U.S. interstate commerce and you can't get paid                  4 for it? You don't understand that construct?                  5 MR. GOLDBERG: Objection to form.                  6 Calls for a legal opinion.                  7 A. I guess as the plain English, if I                  8 look at C, it seems to be illegal or prohibited                  9 to receive it. Does that mean to you that it is                  10 prohibited for a consumer to receive a drug?                  11 I don't think that's what would be                  12 intended. But if I, as an economist and not a                  13 lawyer read it, that's what the words say.                  14 Q. Suffice to say you didn't consider                  15 21 USCA 331 A or C in your own analysis, right?                  16 MR. GOLDBERG: Objection to form.                  17 Asked and answered.                  18 A. I did not rely on this document to                  19 reach my opinions. My recollection is that                  20 these statements are included in the materials                  21 used by Dr. Conti, and so I consider her                  22 materials and the opinions that she draws, in my                  23 report, responding to those opinions.                  24 Q. Can you show me or tell me where in</p>
<p style="text-align: right;">Page 179</p> <p>1 with in my report. The concept of legitimate                  2 supply being necessary for value is something I                  3 reject.                  4 Q. Do you see, in Exhibit 3, that the                  5 third prohibited act under C reads, The receipt                  6 in interstate commerce of any food, drug,                  7 device, tobacco product or cosmetic that is                  8 adulterated or misbranded, and the delivery or                  9 proper delivery thereof, for pay or otherwise,                  10 is yet another prohibited act.                  11 Do you see that?                  12 A. I see where you are reading from the                  13 document.                  14 Q. And where it says, And the delivery or                  15 proffered delivery thereof for pay, do you                  16 understand that the prohibition against, in this                  17 case, a drug manufacturer being paid for an                  18 adulterated drug?                  19 MR. GOLDBERG: Objection to form.                  20 Calls for a legal opinion.                  21 A. I guess I don't have an opinion on                  22 what this means or a clear understanding of what                  23 number C means.                  24 Q. You don't have an understanding that</p>	<p style="text-align: right;">Page 181</p> <p>1 your report you discuss these prohibited acts                  2 and their impact on your economic analysis?                  3 MR. GOLDBERG: Ruben, while Dr. Stiroh                  4 is looking at that, when you get a chance,                  5 could we take a break for a minute or two?                  6 MR. HONIK: At a -- at an appropriate                  7 place to stop, which is soon, I think.                  8 MR. GOLDBERG: Thanks.                  9 A. In my report, I have a section                  10 Roman II, "Background," that starts on page 9,                  11 with paragraph 9.                  12 Paragraph 10 has my understanding of                  13 some of the facts at issue in this case,                  14 including whether there are amounts of NDMA in                  15 the VCDs at issue.                  16 Q. Dr. Stiroh, I'm looking at                  17 paragraphs 9 and 10, and this entire                  18 "Background" section. I don't see a blessed                  19 thing about the law prohibiting the introduction                  20 of adulterated drugs in interstate commerce.                  21 Where is -- where is it that you say it's in                  22 there?                  23 MR. GOLDBERG: Objection.                  24 Argumentative.</p>



<p style="text-align: right;">Page 182</p> <p>1 A. I don't believe I used that phrase              2 anywhere in my report.              3 Q. Do you -- are you aware that              4 defendants' own expert on the pharmaceutical              5 supply chain, cGMP chemistry, agrees that this              6 construct in Exhibit 3 that we've been looking              7 at means that there could be no legitimate              8 supply curve? Are you aware of that?              9 A. I am not.              10 Q. Have you read or been informed              11 about -- by the defense, about the testimony of              12 Dr. Lambert in this case?              13 A. I'm not familiar with the testimony of              14 Dr. Lambert.              15 Q. And I don't -- I don't think you so              16 much as refer to him in your reliance materials,              17 correct?              18 A. I don't believe I refer to him in my              19 reliance materials. I don't recall having              20 relied on anything that he wrote.              21 Q. Would it surprise you, then, that he              22 agrees that if the FDA considers a drug to be              23 adulterated or misbranded, as set out here, and              24 the fact that it can't be lawfully introduced</p>	<p style="text-align: right;">Page 184</p> <p>1 you'd like, I can put it up on a share screen or              2 direct your attention to a paper exhibit, but              3 let me first begin by reading it.              4 And for the record, this is the              5 deposition -- sworn deposition testimony of              6 Dr. Lambert. It appears at page 104, beginning              7 at line 21, and the question was as follows:              8 And so does that not mean,              9 Dr. Lambert, that there can be no legitimate              10 supply curve, that is, an adulterated drug              11 cannot be legally introduced into the legal              12 class of trade in the United States?              13 And the witness, Dr. Lambert, for the              14 defense, said, So if it's determined by the FDA              15 that it is indeed adulterated, then I would              16 agree.              17 And so my question to you is, are you              18 in disagreement with Dr. Lambert that there can              19 be no legitimate supply curve by the application              20 of this law, and if so, if you do disagree, can              21 you tell us under oath why?              22 MR. GOLDBERG: Objection. Calls for a              23 legal opinion.              24 A. In my opinion as an economist, there</p>
<p style="text-align: right;">Page 183</p> <p>1 into interstate commerce, and the manufacturer              2 or supplier of that lawfully receives money,              3 that that means under that construct, it can't              4 be a legitimate supply curve?              5 MR. GOLDBERG: Objection --              6 Q. Do you deny that?              7 MR. GOLDBERG: Objection to form.              8 Foundation.              9 A. Are you asking me if I deny what              10 somebody else said in testimony I haven't read?              11 Q. Yes. Do you have any basis to              12 disagree with what Dr. Lambert, on behalf of              13 defendants, told us under oath?              14 MR. GOLDBERG: Objection to form.              15 Assumes facts not in evidence.              16 A. I have a basis to disagree with              17 certain statements that you have made on the              18 grounds of them not being economic principles.              19 Whether they are legal principles, I              20 don't have a basis to agree with you or disagree              21 about whether somebody else in this case said              22 something or agreed to something when I have not              23 read their testimony.              24 Q. Well, let me read it to you, and if</p>	<p style="text-align: right;">Page 185</p> <p>1 is a supply curve if there is supply of              2 products, and -- or willingness to supply              3 products at different price points. That's what              4 a representation of a supply curve would be.              5 My understanding is that not all of              6 the VCDs at issue contained the NDMA and NDEA              7 impurities, and it is also my opinion, as an              8 economist, that whether there is supply of the              9 Valsartan-containing drugs at issue or not,              10 there is value that was received for the              11 products that were purchased and consumed.              12 Q. Dr. Stiroh, if Dr. Lambert is right              13 and you're wrong, that there is an illegitimate              14 supply curve, you'd agree that no equilibrium              15 price could be set, because you've already              16 confirmed that it requires the intersection of a              17 supply-and-demand curve. Right?              18 A. I would agree that an equilibrium              19 price is the intersection of a supply-and-demand              20 curve. I have disagreed with you about whether              21 there is still a supply curve for              22 Valsartan-containing drugs, and I disagree with              23 Dr. Conti that the absence of supply of certain              24 Valsartan-containing drugs implies that the</p>

<p style="text-align: right;">Page 186</p> <p>1 value of those products that were consumed by                  2 consumers is zero.                  3 Q. Dr. Stiroh, inasmuch as you're not a                  4 cGMP expert, would you disagree with the idea,                  5 in good manufacturing practices and by the                  6 application of FDA regulations, that if you                  7 can't guarantee the integrity, purity, safety                  8 and efficacy of one lot or batch of drugs that                  9 fail to meet cGMP, that that implicates and                  10 causes all of the pills to be adulterated?                  11 MR. GOLDBERG: Objection to form.                  12 Ambiguous. Calls for a legal opinion.                  13 A. The part of that that I agree with is                  14 that I am not a cGMP expert.                  15 I don't think I even followed the rest                  16 of the question.                  17 And -- I guess not sure why you would                  18 ask my opinion with -- starting it out by saying                  19 that you agree that I am not a cGMP expert. I                  20 don't have opinions on that topic.                  21 Actually, if we could take a break.                  22 MR. GOLDBERG: Okay. The witness has                  23 just asked to take a break, and I had asked                  24 about ten minutes ago.</p>	<p style="text-align: right;">Page 188</p> <p>1 now --                  2 MR. HONIK: Thank you.                  3 THE VIDEOGRAPHER: The time right now                  4 is 3:11 p.m. We are off the record.                  5 (A recess was taken from 3:11 to                  6 3:28.)                  7 THE VIDEOGRAPHER: Time right now is                  8 3:28 p.m. We are back on the record.                  9 MR. HONIK: Jeff, for the benefit of                  10 the record, I've had Dr. Stiroh pull a                  11 transcription about which I questioned her                  12 earlier, and we're going to be marking this                  13 Exhibit 4.                  14 (Transcript of deposition of William                  15 J. Lambert was marked Stiroh Exhibit 4 for                  16 identification, as of this date.)                  17 THE COURT REPORTER: It's now marked.                  18 Q. Dr. Stiroh, we had been talking a bit                  19 about this idea of equally -- equilibrium                  20 pricing and the intersection of                  21 supply-and-demand curves.                  22 As an economist -- I don't want to                  23 oversimplify it, but the way one would graph a                  24 supply curve or put that on the graph, you'd be</p>
<p style="text-align: right;">Page 187</p> <p>1 MR. HONIK: I just have some quick                  2 follow-up to that, and then we can break.                  3 Q. The reason I've asked you, Doctor, is                  4 that you keep repeating that some but not all of                  5 the drugs, as to some of the manufacturers, was                  6 contaminated, and I'm merely asking if you have                  7 any awareness of the rules and regulations of                  8 current manufacturing practices which renders                  9 all drugs from a facility as adulterated if you                  10 can't guarantee the safety of each and every                  11 product coming out of that facility.                  12 You either are or are not aware of                  13 that. That's what I've asked.                  14 MR. GOLDBERG: Objection to form.                  15 Calls for a legal opinion.                  16 Q. Are you?                  17 A. I am not aware of that, and I am not                  18 offering opinions on that.                  19 Q. Thank you.                  20 MR. HONIK: How much time of a break                  21 would you like, Seth?                  22 MR. GOLDBERG: Why don't we take                  23 ten minutes.                  24 THE VIDEOGRAPHER: The time right</p>	<p style="text-align: right;">Page 189</p> <p>1 able to see, in the case of a consumer product,                  2 the actual movement of a line representing sales                  3 in the marketplace. Correct?                  4 A. No. I think you are -- either I am                  5 confused from your question or you're confusing                  6 concepts in your question.                  7 A demand curve and a supply curve that                  8 intersects at a point that we call the                  9 equilibrium price does not show movement along a                  10 line.                  11 You can imagine it as the amounts that                  12 would be consumed at different price points from                  13 the standpoint of consumers, or would be                  14 supplied at different price points from the                  15 standpoint of suppliers. What we observe in                  16 data is what happens at the intersection.                  17 Q. That's right. And you got me on the                  18 words. All I meant to ask you, in -- however                  19 inartfully, and we can go around on this if                  20 you'd like, but all I want to understand is, if                  21 it isn't -- if you aren't able, as an economist,                  22 to plot on a graph a supply curve.                  23 A. I'm sorry. You're asking me if it is                  24 possible to plot on a graph a supply curve?</p>

<p style="text-align: right;">Page 190</p> <p>1 Q. Yeah.</p> <p>2 A. Yes.</p> <p>3 Q. And when you do so, if the value of a</p> <p>4 particular point on that graph is zero, is at</p> <p>5 zero, is -- does that mean that there's no</p> <p>6 supply of that item or product?</p> <p>7 A. No. There may be a point where</p> <p>8 quantity demanded is zero and the price could be</p> <p>9 quite high. And you would expect that there</p> <p>10 would be many suppliers that would be willing to</p> <p>11 supply the product at that high price, but there</p> <p>12 would be no consumer demand for it.</p> <p>13 Q. Did you hear me ask you anything about</p> <p>14 pricing?</p> <p>15 MR. GOLDBERG: Objection to form.</p> <p>16 Argumentative.</p> <p>17 A. I -- then I should have asked for</p> <p>18 clarification, what are you envisioning on the</p> <p>19 axes for a supply curve or a demand curve that</p> <p>20 would intersect.</p> <p>21 I imagined that they were intersecting</p> <p>22 at a point that gives you coordinates for price</p> <p>23 and quantity.</p> <p>24 Q. Okay. So let's try it again. I'm not</p>	<p style="text-align: right;">Page 192</p> <p>1 is something that Dr. Conti has created for this</p> <p>2 report. I don't understand it outside of the</p> <p>3 context of her report. And I hear you use it,</p> <p>4 and before, you objected to me saying her name.</p> <p>5 I have seen IQVIA data, and after the</p> <p>6 dates of recalls, it is apparent in the IQVIA</p> <p>7 data that it looks like there are sales of the</p> <p>8 products at issue. Whether that's a flaw in the</p> <p>9 data source or an actual fact, I cannot tell you</p> <p>10 as I sit here.</p> <p>11 You asked me if I have seen the data.</p> <p>12 I have seen it, and that is what I have</p> <p>13 observed.</p> <p>14 Q. Let -- let me ask the question this</p> <p>15 way. What's your definition of no supply curve?</p> <p>16 A. I don't have a definition of no supply</p> <p>17 curve. I have a definition of no supply. Which</p> <p>18 I think that you asked me earlier, and I agreed,</p> <p>19 that if supply is zero, that is no supply. That</p> <p>20 is not the same as there being no supply curve.</p> <p>21 A supply curve is a construct of the</p> <p>22 consideration of how much would be supplied by</p> <p>23 suppliers at different price points.</p> <p>24 Would be willing to be supplied.</p>
<p style="text-align: right;">Page 191</p> <p>1 talking about a demand curve, and I'm not</p> <p>2 talking about equilibrium pricing. I'm merely</p> <p>3 asking you if, as an economist, when you plot a</p> <p>4 supply curve on a graph, if -- if it's at zero</p> <p>5 on the horizontal axis and zero at the vertical</p> <p>6 axis, if that means there's no supply.</p> <p>7 A. Yes.</p> <p>8 MR. GOLDBERG: Objection.</p> <p>9 Q. Okay.</p> <p>10 Have you seen the sales of any of the</p> <p>11 at-issue VCDs after recall?</p> <p>12 A. Yes.</p> <p>13 Q. And do you agree that those sales are</p> <p>14 at zero in the case of the recalled manufacturer</p> <p>15 products?</p> <p>16 A. I have seen, in the IQVIA data, that</p> <p>17 there continue to be records of sales of the</p> <p>18 recalled products after the dates of recalls.</p> <p>19 Q. You don't agree that there was no</p> <p>20 supply, legitimate supply curve for ZHP VCDs</p> <p>21 after the recall?</p> <p>22 MR. GOLDBERG: Objection to form.</p> <p>23 Ambiguous.</p> <p>24 A. I think the term, "legitimate supply,"</p>	<p style="text-align: right;">Page 193</p> <p>1 Q. Do you agree that one of the ways to</p> <p>2 think about this case is to create a but-for</p> <p>3 world prior to the recall starting in 2018,</p> <p>4 going back to the beginning of manufacturing in</p> <p>5 2012, in which there's zero supply?</p> <p>6 MR. GOLDBERG: Objection to form.</p> <p>7 Ambiguous.</p> <p>8 A. I have considered that if the but-for</p> <p>9 world has zero supply of certain Valsartan</p> <p>10 products between 2012 and 2018, what</p> <p>11 implications that has for consumer expenditures.</p> <p>12 Q. Yeah, that's not really what I asked</p> <p>13 you.</p> <p>14 Could you, at my direction, supply a</p> <p>15 but-for or develop a but-for model in which</p> <p>16 there's zero supply, between 2012 and 2018, of</p> <p>17 Valsartan-containing drugs, yes or no? And then</p> <p>18 I have a follow-up question.</p> <p>19 A. I could construct a model, considering</p> <p>20 the scenario where there is zero supply of</p> <p>21 certain Valsartan-containing drug products, and</p> <p>22 consider the economic implications of that model</p> <p>23 for financial outcomes for consumers.</p> <p>24 Q. I don't know what the second part of</p>

<p style="text-align: right;">Page 194</p> <p>1 it is, but I take it you can -- you can create a                  2 but-for world with zero VCD supplies. That much                  3 you said you could do. Right?                  4 A. I can do that.                  5 Q. In that but-for world, is not the --                  6 the cost of that drug zero?                  7 Isn't the -- excuse me, I misspoke.                  8 Isn't the price of that drug zero?                  9 A. No.                  10 As an economic matter, the price for a                  11 product that has been taken out of the market no                  12 longer exists.                  13 For a but-for world to be complete and                  14 meaningful in a damages context, then you would                  15 need to consider what consumers would purchase                  16 instead of the product that they did purchase.                  17 I can construct a damages model where                  18 this but-for scenario is that there is no supply                  19 of the Valsartan-containing drugs at issue.                  20 For that to be a complete damage                  21 model, I need to consider what do patients do to                  22 manage their blood pressure in the absence of                  23 the products that they actually did consume.                  24 Q. Dr. Stiroh, you didn't even come close</p>	<p style="text-align: right;">Page 196</p> <p>1 estimate damages under a scenario where we                  2 imagine removing the supply of                  3 Valsartan-containing drugs.                  4 To make that an economically valid                  5 damage assessment, I would need to consider what                  6 do consumers who purchase those drugs do in the                  7 alternative. I would consider the prices they                  8 would pay for alternative drugs, whether they                  9 alternative -- they are alternative ARBs or                  10 different VCDs other than the contaminated ones.                  11 It is not true to say the price is                  12 zero if there is no supply. There is -- price                  13 does not exist in that case. That is                  14 meaningless, to say that the price is zero.                  15 Price is zero is a free good; price nonexistent                  16 is for a product that doesn't exist.                  17 Q. I understand your -- your answer. And                  18 I think anyone listening to this will understand                  19 it as well.                  20 Why don't you pull up from your pile                  21 of exhibits there, both Tabs 18 and 19, which                  22 would be your invoicing in this case.                  23 We're going to mark your exhibits --                  24 excuse me, your invoices as Exhibit --</p>
<p style="text-align: right;">Page 195</p> <p>1 to answering my question.                  2 What I asked you to assume is not all                  3 the things you ingrafted upon my hypothetical.                  4 It's true, because you've already told me there                  5 could be no equilibrium price where there's no                  6 intersection of supply and demand, and having                  7 informed me that you can create a but-for world                  8 with zero supply, which means it will never meet                  9 a demand curve, there can be no equilibrium                  10 price. Correct?                  11 MR. GOLDBERG: Objection to form.                  12 Argumentative. Asked and answered.                  13 Ambiguous.                  14 A. No.                  15 Acknowledging it's getting a little                  16 late in the afternoon, that question was                  17 absolutely meaningless from a standpoint of                  18 economics.                  19 I can create a but-for world --                  20 Q. I guess --                  21 A. Let me finish my answer, please.                  22 MR. GOLDBERG: Hang on, Ruben. Hang                  23 on, Ruben. The witness is talking.                  24 A. I can create a but-for world and</p>	<p style="text-align: right;">Page 197</p> <p>1 Exhibit 5, and the summary that we prepared as                  2 Exhibit 6.                  3 Would you give that to our reporter,                  4 please.                  5 (Invoice from NERA Economic Consulting                  6 was marked Stiroh Exhibit 5 for                  7 identification, as of this date.)                  8 (Summary of invoices was marked Stiroh                  9 Exhibit 6 for identification, as of this                  10 date.)                  11 Q. Do you have Exhibits 5 and 6 in front                  12 of you?                  13 MR. GOLDBERG: Not yet, not yet. Hang                  14 on. Wait one second, please.                  15 Okay, go ahead.                  16 Q. Do you have Exhibit 5, the collection                  17 of invoices that were turned over to us?                  18 A. I do.                  19 Q. You're familiar with your own                  20 invoicing for the work that you and your                  21 associates at your firm did in this case?                  22 A. I am.                  23 Q. You reviewed them before today's                  24 deposition?</p>



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1 A. I did.

2 Q. The earliest of the activity on

3 invoicing that I have relates to October of

4 2020. Is that correct?

5 A. The -- the first page of the project

6 diaries that I have has an entry from me from

7 September 15, 2020.

8 Q. Does that correspond to the earliest

9 point at which you did work on this matter?

10 A. I expect I would have read the

11 complaint prior to that date, but it is the --

12 the first date that I recall once I had

13 received -- been retained and received an

14 assignment.

15 Q. And the work that you did in this

16 matter, Dr. Stiroh, you did perhaps hired by one

17 counsel but you did it on behalf of all the

18 defendants. Didn't you?

19 A. Yes, that is correct.

20 Q. And that's specifically set out in

21 your report, is it not?

22 A. Yes. My report, under "Assignment,"

23 says, I've been asked for counsel for all

24 defendants, and goes on from there.

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1 Q. Do you know of any other economist

2 that was engaged to do any work similar to your

3 own by the defendants in this case?

4 A. I'm not sure what you mean by that.

5 Q. Are you the sole economist engaged by

6 the defendants to prepare a report on whether or

7 not damages can be ascertained on a class-wide

8 basis?

9 A. I am the only -- I'm the only one that

10 I'm aware of, but I -- I don't know if they've

11 engaged others.

12 Q. And from my review of your own

13 invoicing, the last of the invoices covers the

14 period December ending last year, 2021. Is that

15 correct?

16 A. Yes.

17 Q. Would you put Exhibit 6 in front of

18 you.

19 A. I have it.

20 Q. This is a summary that we put together

21 that's a simple computation or addition of the

22 various invoice amounts from October of 2020

23 through the end of December 2021.

24 Do you see that?

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1 A. I do.

2 Q. Do you have any reason to dispute the

3 amounts that are indicated or enumerated in

4 Exhibit 6?

5 A. I haven't gone through it and matched

6 them up, but I don't have a reason to dispute

7 them.

8 Q. So, if the total of the invoice

9 amounts for your work and that of your firm was

10 \$1,369,114 through the end of calendar year

11 2021, you would agree with that. Right?

12 A. Yes.

13 Q. How -- with what frequency did your

14 firm issue invoicing for work done by NERA, your

15 firm in this case?

16 MR. GOLDBERG: Ruben, are you able to

17 put the summary document up on the screen.

18 I'm getting that request from people who

19 are watching in on Zoom.

20 MR. HONIK: Yeah, I'd be delighted to.

21 Dave, are you able to do that?

22 MR. STANOCH: It's in the public

23 exhibit folder at Exhibit 6, but --

24 MR. HONIK: Do you know how to pull it

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1 up as a screen share?

2 MR. STANOCH: Stand by.

3 Q. There we go. Is -- is what you see on

4 the screen, Dr. Stiroh, the summary that we

5 marked Exhibit 6?

6 A. It is what you marked as Exhibit 6.

7 Looking at it now, I -- I'm not sure -- I see

8 for January dash 21, 301,262.50. And if I look

9 at an invoice that I think is intended to cover

10 that period, I see 30,162.50.

11 Q. Okay. If there's a computational

12 error, then we'll correct it.

13 A. If I can, then I think I need to

14 correct my last answer. I did not dispute that

15 these were accurate, and now I do.

16 Q. The -- the question that I -- that I

17 posed to you, which I don't think you answered

18 as yet, is, with what frequency has NERA, on

19 your behalf and on behalf of your associates,

20 billed the defendants for your time? Has it

21 been on a monthly basis?

22 A. Generally, the invoices reflect a

23 month's work. The frequency with which we get

24 them out the door is not quite monthly, but



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1 the -- the -- the period of coverage is  
2 typically a month.  
3 Q. Have you seen any invoicing for the  
4 work of yourself and your team for any part of  
5 2022?  
6 A. Yes.  
7 Q. When did you see such invoicing?  
8 A. We are in the process of reviewing  
9 those currently. I have not yet completed my  
10 review of them. I have seen that they're in the  
11 process of being prepared.  
12 Q. And is that true for January 2022,  
13 that is, you haven't billed for January 2022?  
14 A. That is correct.  
15 Q. Are you able to -- since you've seen  
16 the invoicing, and you're auditing it, can you  
17 tell me the number of additional hours that  
18 reflect work of yourself and others at NERA in  
19 2022?  
20 A. Not by memory. There would be hours  
21 associated with completing my report. But I  
22 don't recall specifically what the hours were.  
23 Q. Right. And all I'm asking you is to  
24 estimate for me, if you can, how many total

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1 hours NERA is likely to bill from January 1,  
2 2022, to the present, which would include the  
3 finalization of your report, subsequent review,  
4 any testimony of experts in this case,  
5 preparation for today, anything else that you  
6 might have done in -- in connection with your  
7 engagement.  
8 MR. GOLDBERG: Objection.  
9 Q. How many hours would that total?  
10 MR. GOLDBERG: Objection.  
11 Speculation.  
12 A. I think the total would be around,  
13 say, 3,500 hours for all of NERA's work in this  
14 matter. And so whatever is totaled up in the  
15 invoices through December 2021 would be  
16 subtracted off of that with the understanding  
17 that that is sort of a ballpark guess.  
18 Q. Understood.  
19 Turn with me, in Exhibit 5, which is  
20 the -- which are the invoices themselves, and I  
21 just want to go through some of them to get a  
22 flavor for what I'm looking at here.  
23 There's something called "Project  
24 Diary," dated November 24, 2020, and there's an

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1 invoice number US 48601P005.  
2 Do you see that page, for example?  
3 A. I might need you to say it again a  
4 little bit slower. What is the invoice date  
5 that you want me to look at?  
6 Q. Let's try to do it this way. I think  
7 it's the second page of Exhibit 5.  
8 A. I have the second page --  
9 Q. Let's do that.  
10 A. I have the second page of Exhibit 5 in  
11 front of me.  
12 Q. In the right-hand upper corner, does  
13 it say November 24, 2020?  
14 A. It does.  
15 Q. And do you see under your own name as  
16 managing director, there's an entry, it says  
17 December 15, 2020?  
18 A. Yes.  
19 Q. And the description of services  
20 rendered is redacted, with the exception of the  
21 word "discussion," with S.LI.  
22 Do you see that?  
23 A. Yes.  
24 Q. Did you cause that redaction?

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1 A. I did not.  
2 Q. Do you know why it was redacted?  
3 MR. GOLDBERG: Objection. I mean,  
4 that -- that calls for a legal conclusion.  
5 And this is information that has been  
6 marked confidential by counsel.  
7 MR. HONIK: Nothing's been marked  
8 confidential. I just have black lines. Do  
9 you want to convey why this has been  
10 redacted?  
11 MR. GOLDBERG: You can ask the witness  
12 the questions. I'm not here to testify.  
13 MR. HONIK: I have asked her.  
14 A. All right. But I thought you were  
15 asking Mr. Goldberg. Sorry.  
16 Q. Well, he -- he interrupted.  
17 The question I asked was, why was this  
18 redacted and what's in there? What -- what  
19 service did you render on September 15, 2020?  
20 MR. GOLDBERG: Let me object to the  
21 extent you are being asked to provide  
22 information not in a testifying capacity.  
23 THE WITNESS: Now I answer?  
24 MR. GOLDBERG: Yes.

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<p>1 A. My team and I spent time on this case 2 in a consulting capacity separate from the 3 assignment that I have described in my report. 4 It's my understanding that -- 5 Q. I don't -- I'm sorry, I don't 6 understand the distinction you're making. 7 MR. GOLDBERG: Well, counsel, that's 8 not really for Dr. Stiroh. We can talk 9 about this among lawyers. But -- but I'll 10 leave it at that. 11 If you'd like to go off the record, 12 I'm happy to do that, and we can talk about 13 it. 14 MR. HONIK: Well, I -- no, I'd like to 15 stay on the record. I think it's 16 permissible for me to ask about her work in 17 this case. 18 It's -- you've been billed for it. 19 It's in the invoice that's been produced to 20 us. I'd like to know what the work was 21 that relates to this case. 22 Q. Do you -- do you -- first of all, do 23 you know the answer to my question? 24 A. I have a general recollection of some</p>	<p>1 December 2021. 2 Q. Well, do you see, for example, the 3 time entries for an associate analyst by the 4 name of Nathan Evans? Do you see that? 5 MR. GOLDBERG: We're not on the same 6 page, Ruben. So -- are you talking about 7 the invoice dated December 8, 2021, or the 8 time -- 9 MR. HONIK: No, I'm talking about a 10 page called "Project Diaries." 11 A. I have a page called "Project Diaries" 12 that reflects time for Nathan Evans for 13 December 2021. 14 Q. Okay. But do you see the entries for 15 October 14 through October 20 are completely 16 redacted? 17 A. I'm sorry. I was looking at the wrong 18 one. I think -- let me catch up with you. If 19 you give me the dates for the entries, I think I 20 can find the page. The person and the dates for 21 the entries. 22 Q. October -- October 14 through 23 October 20, 2021. 24 A. I believe I have the correct page in</p>
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<p>1 of the work that was done that is not connected 2 with my assignment with respect to class 3 certification issues. 4 Q. So, are you saying that you had 5 multiple assignments from these same defendants? 6 MR. GOLDBERG: Counsel, I don't want 7 to belabor the point here. Just as you 8 have done with your experts, to the extent 9 Dr. Stiroh provided services for defendants 10 that were not related to the opinions in 11 her report, that information is redacted. 12 MR. HONIK: Is that the reason they 13 were redacted? 14 MR. GOLDBERG: I just represented that 15 to you. 16 Q. Dr. Stiroh, can you turn deeper into 17 the pile of invoices -- let me try to shorthand 18 way to -- shorthand way. 19 Can you go to project diaries dated 20 December 8, 2021. It's in- -- Invoice 21 Number US 53163P005. And I would estimate it's 22 about eight or ten pages from the back. 23 A. I have in front me a page with project 24 diaries with my time that encompasses</p>	<p>1 front of me. 2 Q. Do you see how all of Mr. Evans' time 3 for those dates are redacted? 4 A. I do. 5 Q. What does this work relate to that 6 caused it to be redacted, if not support for 7 this report? 8 MR. GOLDBERG: Again, counsel, that 9 information has been redacted because it 10 is -- does not pertain to Dr. Stiroh's 11 opinions and work in developing her 12 opinions and the report, and therefore, 13 it's been redacted. And -- it -- 14 Q. Let me ask a different question. 15 Doctor -- Dr. Stiroh, are you able, 16 you yourself, able to go through all of these 17 invoices and project diaries and, on your own, 18 separate out what was supporting, allegedly, 19 your report in this case that you proffered to 20 this point, and other work? Can you discern the 21 difference? 22 A. I could potentially do that, yes. 23 Q. What -- what criteria would you use to 24 distinguish work done in support of this report,</p>

<p style="text-align: right;">Page 210</p> <p>1 dated January 12 of this year, and any other                  2 assignments that you may have received?                  3 A. Work that I asked to be done for                  4 purposes -- from -- to my staff for reviewing                  5 information or data, or doing data analyses                  6 related to my report, would be things that I                  7 would consider in support of my work.                  8 If there are tasks that counsel asked                  9 of any of my team that was not coming at my                  10 direction and not for purposes of my report,                  11 that would be -- not be something I would                  12 consider to be work for my report.                  13 Q. Are you -- are you preparing another                  14 report in this case?                  15 A. I am not preparing another report in                  16 this case.                  17 Q. Have you, nonetheless, been asked to                  18 undertake a different assignment in this case as                  19 it relates to VCDs in this MDL?                  20 MR. GOLDBERG: Objection to form. To                  21 the extent that there's information or                  22 services that Dr. Stiroh is providing that                  23 are not pertaining to her opinions as a                  24 testifying expert, that information is off</p>	<p style="text-align: right;">Page 212</p> <p>1 I've given you the explanation for why                  2 the information has been redacted. And                  3 that's because it doesn't pertain to the                  4 services Dr. Stiroh is providing for us in                  5 the capacity as a testifying expert.                  6 I will instruct the witness not to                  7 answer --                  8 MR. HONIK: She just testified --                  9 MR. GOLDBERG: -- because you're just                  10 going to -- you're just going to create a                  11 record that is confused and misleading.                  12 MR. HONIK: She's just testified under                  13 oath that she's had no other assignment.                  14 MR. GOLDBERG: Then that's -- that's                  15 my point. That's my point.                  16 MR. HONIK: That she's had a single                  17 assignment.                  18 MR. GOLDBERG: That's my point.                  19 So you could move on, because I've                  20 instructed her not to answer.                  21 MR. HONIK: I -- I take that.                  22 Q. Doctor, you apparently, some years                  23 ago, were involved in a case called LaPoint                  24 versus AmerisourceBergen Corp.</p>
<p style="text-align: right;">Page 211</p> <p>1 limits.                  2 MR. HONIK: It's just a yes or no.                  3 I'm not going to ask her what it is.                  4 MR. GOLDBERG: And that's the answer.                  5 I just gave you answer, which is the                  6 question is not a proper question.                  7 MR. HONIK: You don't get to decide                  8 what's a proper question or not.                  9 I'd like Jeff to read it -- excuse me,                  10 I'd like Jeff to read it back, please.                  11 (The record was read back.)                  12 MR. HONIK: It's MDL.                  13 MR. GOLDBERG: Same.                  14 Q. Without revealing what the nature or                  15 name of that assignment is, are you able to                  16 answer the question simply yes or no?                  17 A. I have not been given an additional                  18 assignment in this case.                  19 DIR Q. Is that true from the beginning of your                  20 engagement to the present?                  21 MR. GOLDBERG: I'm -- I'm going to                  22 instruct the witness not to answer, because                  23 you're taking her down a road that is                  24 misleading.</p>	<p style="text-align: right;">Page 213</p> <p>1 Do you remember that case?                  2 A. I do.                  3 Q. And apparently in that case you were                  4 hired by the plaintiff. The legal dispute                  5 concerned a would-be merger between                  6 two companies, plaintiff having a product called                  7 a bedside point-of-care, a bar code product of                  8 some sort, that was supposed to have been merged                  9 or acquired by AmerisourceBergen.                  10 Did I get that about right?                  11 A. I don't remember those details. I                  12 remember that there was a point-of-care bar code                  13 product that was involved. I don't recall                  14 the -- the aspects of the merger.                  15 Q. That's right. And your -- your job as                  16 an economist was to determine and -- and provide                  17 economic support for the contention that but for                  18 the merger, that -- that the company who made                  19 this product, which was called Bridge, was                  20 destined to remain a dominant force in that                  21 particular market, and you were going to do some                  22 economic calculations based on that premise.                  23 Correct?                  24 A. I -- I can't agree with you, just</p>

<p style="text-align: right;">Page 214</p> <p>1 the -- with respect to I don't have the memory                  2 of that. It -- every word you're saying brings                  3 back more memories of it, but I don't -- it's a                  4 while ago and I don't remember the specifics of                  5 the case.                  6 Q. Uh-huh. Why don't we -- have you seen                  7 the -- the decision by the Court of Chancery of                  8 Delaware in this case?                  9 Ever?                  10 A. I have. Some time ago. But I have.                  11 Q. Right. And do you remember what                  12 happened to your testimony and your work in that                  13 case? Your report?                  14 A. I do.                  15 Q. Can you tell me what you remember                  16 happening to it?                  17 A. Yes. I had written a report. I can't                  18 recall if it -- I think it might have had                  19 damages in it. But it had an economic analysis,                  20 in which I relied on the report of another                  21 expert to supply certain inputs from my report,                  22 particularly market share.                  23 In discussions with the other expert,                  24 I had -- was given an understanding of the</p>	<p style="text-align: right;">Page 216</p> <p>1 that I was working with, decided not to put my                  2 report into evidence, and I did not testify to                  3 it.                  4 Q. But was it clearly known that this                  5 reliance upon data was not data collected or                  6 compiled by you but, in fact, by some other                  7 expert? Was that well known and clear?                  8 A. I don't know what you mean by "well                  9 known." But certainly in my report, it was                  10 referenced to the other expert, and the other                  11 expert, I think, also had a report or opinion or                  12 materials that were not included --                  13 Q. And --                  14 A. -- in the court materials.                  15 Q. -- did you say that that other                  16 expert's report was likewise pulled?                  17 MR. GOLDBERG: Objection to form.                  18 Mischaracterizes the testimony.                  19 A. I don't recall what happened with the                  20 other expert and his report. To the best of my                  21 recollection, the information and circumstances                  22 became apparent during his deposition, which                  23 suggests that maybe he did have a report, but I                  24 don't recall with certainty.</p>
<p style="text-align: right;">Page 215</p> <p>1 methodologies that he used to assess market                  2 shares.                  3 On the eve of trial, it became                  4 apparent that what I had been given to                  5 understand about his methodologies was not, in                  6 fact, true, and his report was withdrawn.                  7 Because his report was withdrawn and I                  8 did not have confidence in the method by which                  9 the data were collected, I did not feel I could                  10 testify to the numbers in my report, and                  11 together with counsel, we withdrew my report                  12 from the case.                  13 Q. So according to you, there was some                  14 unreliable data that was used in your report,                  15 and you -- you were pulled as an expert; is that                  16 what you're saying?                  17 MR. GOLDBERG: Objection to form.                  18 Mischaracterizes the testimony.                  19 A. That's not what I'm saying. The -- in                  20 the course of vetting the data that I used in my                  21 report, I was given to understand a set of                  22 circumstances that I later understood to be                  23 incorrect.                  24 I, with -- together with the counsel</p>	<p style="text-align: right;">Page 217</p> <p>1 Q. Well, I thought you had testified a                  2 moment ago under oath that his report was pulled                  3 just like yours. Is that incorrect                  4 understanding?                  5 MR. GOLDBERG: Objection.                  6 Mischaracterizes the testimony.                  7 A. That is an incorrect understanding.                  8 What I have indicated to you with respect to                  9 this case, it was some time ago and my memory                  10 isn't perfect.                  11 My recollection is that for my report,                  12 I, in consultation with the counsel that I was                  13 working with, elected not to testify to it,                  14 because I did not have faith in the numbers that                  15 were drawn from a different expert's report.                  16 I'm not telling you for a point of                  17 fact what happened to that other expert's                  18 report.                  19 Q. I see. Well, why don't you actually                  20 pull the -- the decision of the court out of the                  21 pile of records there. It's Tab 11. And the                  22 name of the case, again, is LaPoint versus                  23 AmerisourceBergen.                  24 And we'll get go ahead and mark that</p>



<p style="text-align: right;">Page 218</p> <p>1 as Exhibit 7.</p> <p>2 Do you now have the exhibit,</p> <p>3 Dr. Stiroh?</p> <p>4 A. Not just yet.</p> <p>5 MR. GOLDBERG: Ruben, it looks like</p> <p>6 you did not provide that document to us.</p> <p>7 MR. HONIK: Okay. Then why don't we</p> <p>8 go ahead and screen share it.</p> <p>9 Dave, do you have it?</p> <p>10 MR. STANOCH: Stand by.</p> <p>11 MR. HONIK: Thank you.</p> <p>12 Okay. Here's the opinion. We'll</p> <p>13 separately send it to -- to Jeff, and he'll</p> <p>14 mark it as Exhibit 7. This is next in</p> <p>15 order.</p> <p>16 As I mentioned earlier, it's from the</p> <p>17 Court of Chancery of Delaware. It's called</p> <p>18 LaPoint versus AmerisourceBergen Corp.</p> <p>19 Q. Do you see that, Dr. Stiroh?</p> <p>20 (Opinion in LaPoint v.</p> <p>21 AmerisourceBergen Corp. was marked Stiroh</p> <p>22 Exhibit 7 for identification, as of this</p> <p>23 date.)</p> <p>24 A. Yes, I do.</p>	<p style="text-align: right;">Page 220</p> <p>1 page 1 and so I can refresh my recollection of</p> <p>2 the summary of details of the case perhaps.</p> <p>3 Q. We can do that if you'd like.</p> <p>4 (Witness reviewing document.)</p> <p>5 MR. GOLDBERG: You want to scroll down</p> <p>6 a little bit, to the -- the -- that</p> <p>7 paragraph under Statement of Facts?</p> <p>8 MR. HONIK: Well, respectfully, this</p> <p>9 isn't your deposition. If --</p> <p>10 MR. GOLDBERG: Yeah, but as counsel,</p> <p>11 I'm allowed to -- as counsel, I'm allowed</p> <p>12 to review the documents that you're going</p> <p>13 to ask questions about. And since you</p> <p>14 didn't provide the document, I also need to</p> <p>15 see it.</p> <p>16 MR. HONIK: Okay. Well, we can email</p> <p>17 it to you right now. I mean, it's only</p> <p>18 about six or seven pages, and, Seth, you</p> <p>19 can take as much time as you'd like to</p> <p>20 review it. Is that what you want?</p> <p>21 MR. GOLDBERG: You can do that. I</p> <p>22 don't want you to ask questions until I've</p> <p>23 been able to review it.</p> <p>24 MR. HONIK: I think it's a colossal</p>
<p style="text-align: right;">Page 219</p> <p>1 Q. And you see the opinions authored by</p> <p>2 Judge Chandler? Do you remember Judge Chandler</p> <p>3 in the case?</p> <p>4 A. I don't think I had occasion to meet</p> <p>5 him.</p> <p>6 Q. That's right. That makes sense.</p> <p>7 MR. HONIK: Turn to page 5, please,</p> <p>8 Dave.</p> <p>9 MR. GOLDBERG: You going to let the</p> <p>10 witness review the document?</p> <p>11 MR. HONIK: If she would like, sure.</p> <p>12 MR. GOLDBERG: Why don't you give her</p> <p>13 a second and let her take a look at page 1</p> <p>14 and page 2 so that she has a chance to look</p> <p>15 at it.</p> <p>16 Q. Is that what you'd like to do,</p> <p>17 Dr. Stiroh? Do you want to review this opinion?</p> <p>18 Or it sounds like you may have remembered it</p> <p>19 fairly well, based on what you told me thus far.</p> <p>20 A. I don't remember the details of the</p> <p>21 case very well. I'll have to say I do remember,</p> <p>22 obviously, the circumstances, because it was</p> <p>23 unique in my history.</p> <p>24 If -- if you could just go back to</p>	<p style="text-align: right;">Page 221</p> <p>1 waste of time and a stalling tactic, but if</p> <p>2 you want to read it, I really don't care</p> <p>3 very much. I'm trying to wrap up</p> <p>4 Dr. Stiroh's deposition and get her out of</p> <p>5 there. We're nearly done.</p> <p>6 MR. GOLDBERG: Ruben, all we're --</p> <p>7 MR. HONIK: She's demonstrated to</p> <p>8 me --</p> <p>9 MR. GOLDBERG: Ruben, all we're doing</p> <p>10 is --</p> <p>11 MR. HONIK: Excuse me. She's --</p> <p>12 excuse me. She's demonstrated to me a</p> <p>13 rather keen recollection of this case. I'm</p> <p>14 not going to quiz her on the case. I'm</p> <p>15 going to focus on what she did and what</p> <p>16 she's already told us happened, which is</p> <p>17 that there was some data problem and she</p> <p>18 got pulled.</p> <p>19 And all I'm going to do is direct her</p> <p>20 to that part of the opinion that addresses</p> <p>21 it. It's a very narrow section.</p> <p>22 But if you want to read the entire</p> <p>23 report -- or, excuse me, opinion, we'll</p> <p>24 send it to you.</p>



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1 MR. GOLDBERG: Yeah, I -- I --  
2 MR. HONIK: You can take as much time  
3 as you like.  
4 MR. GOLDBERG: I think all we wanted  
5 to do is just take a quick scan of the  
6 first page to get familiar with what the  
7 case is.  
8 And Mr. Stanoch had not shown us that  
9 first paragraph.  
10 MR. HONIK: There's no "we"; she  
11 remembers it, you don't. If you want to  
12 read it, read it.  
13 MR. GOLDBERG: Like I said, I just  
14 wanted to get familiar with the first page  
15 here. I wanted Dr. Stiroh to familiarize  
16 herself with it.  
17 A. I have looked at the paragraphs that  
18 are before me on this screen. Until looking at  
19 this, I had not actually recalled that the  
20 entire dispute came from a -- an acquisition.  
21 I remembered the details about my  
22 report and decision not to testify. And if you  
23 ask me the question related to what is in this  
24 decision, I can see if it -- I feel like I need

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1 to have more information about the background of  
2 the case itself.  
3 Q. Let's go to page 5, and we'll see if  
4 you need more review.  
5 And if you do, you'll tell me.  
6 All right.  
7 So -- hold on.  
8 Yeah, go up a little bit. Sorry.  
9 See where it says, B, Questions of  
10 material fact relating to causation and damages?  
11 A. I do.  
12 Q. That's yes?  
13 A. Yes.  
14 Q. So you were -- you were a damage  
15 expert on -- as to causation; do you remember  
16 that?  
17 A. I don't have an independent memory of  
18 it. I'll have to say I -- I -- if you ask the  
19 next question or see if there's something -- I  
20 don't actually remember my specific assignment  
21 without looking back at what the assignment was  
22 that I had been given.  
23 Q. Yeah. So, it says in the -- in the  
24 second full paragraph, in the right-hand column,

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1 you see it's highlighted, it says, Plaintiff's  
2 causation arguments are not helped by the  
3 withdrawal of their key expert witness,  
4 Dr. Lauren J. Stiroh, whose report was meant to  
5 provide support for the contention that but for  
6 a merger with ABC, Bridge was destined to remain  
7 the dominant force in the BPOC market.  
8 Do you see that?  
9 A. I see where you are reading.  
10 Q. Does that refresh your recollection  
11 about what you were doing in the case?  
12 A. It doesn't. I don't -- I don't have  
13 any reason to disagree with what's written  
14 there, but I don't have a recollection of the  
15 work that I did, other than the ultimate  
16 outcome.  
17 Q. Yeah. So, the ultimate outcome is  
18 that, as the judge wrote, virtually on the eve  
19 of trial and after this motion had -- had been  
20 filed, had been fully briefed, Plaintiffs  
21 discovered that the data on which Dr. Stiroh  
22 relied may not have been credibly gathered.  
23 Plaintiffs no longer rely upon the conclusions  
24 in this report.

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1 Did I read that correctly?  
2 A. You did.  
3 Q. Is there any mention about your  
4 reliance upon data or conclusions or anything  
5 from another expert in that paragraph?  
6 A. In that paragraph, it mentions the  
7 data on which I had relied. The data on which I  
8 relied came from another expert.  
9 Q. Okay. But you agree that the court  
10 doesn't note that it came from another expert.  
11 It only notes that it came from your report.  
12 Right?  
13 A. I don't think it does note that it  
14 came from my report. It notes the data on which  
15 I relied, and I am telling you, and I believe  
16 the court knew, that it came from another expert  
17 who might be referenced somewhere else in this  
18 document. I don't know that as I sit here. But  
19 the data on which I relied came from another  
20 expert.  
21 Q. Okay. You see where it says,  
22 Plaintiffs no longer rely upon the conclusions  
23 in this report?  
24 That refers to your report, right?

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1 A. It does.

2 Q. So the data that the judge is writing

3 about that -- that was not credibly gathered was

4 in your report. Correct?

5 A. I can tell you that the data upon

6 which I relied was gathered by another expert.

7 It was the method by -- by which he had gathered

8 data that I found to be unreliable, and so I did

9 not testify to my report.

10 Q. Well, I'm now confused. Was the

11 method for gathering it unreliable, or was the

12 data itself unreliable, or both?

13 A. To the best of my recollection, the

14 method for gathering it was unreliable, and that

15 led me to conclude that the data itself would

16 not be a reliable input into a damages estimate.

17 Q. And you only discovered that after you

18 employed the data using the methodology which

19 you knew to be unreliable. Right?

20 A. No.

21 I did not -- when I used the data, I

22 did not know them to be unreliable. I was -- I

23 had vetted the data and the process.

24 What I was told about the process of

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1 data gathering turned out not to be the process

2 that had been employed. When I learned that a

3 different process that I felt was unreliable had

4 been employed, it was my opinion that the --

5 because the data gathering process was not

6 reliable, I could not rely upon the data and was

7 not willing to testify as to the damages that

8 used those data as an input.

9 MR. HONIK: Those are all the

10 questions I have of this witness. We're

11 going to keep the deposition open, hope

12 never have -- to have to revisit it, but

13 inasmuch as you withheld invoicing

14 information which needs to be supplemented,

15 we'll keep the record open.

16 You want to take a break and determine

17 if you have any questions?

18 MR. GOLDBERG: Yeah. Why don't we do

19 that. Why don't we come back in

20 ten minutes.

21 THE VIDEOGRAPHER: Time right now is

22 4:16 p.m. We are off the record.

23 (A recess was taken from 4:16 to

24 4:31.)

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1 THE VIDEOGRAPHER: Time right now is

2 4:31 p.m. We are back on the record.

3 EXAMINATION BY MS. KAPKE:

4 Q. Good afternoon, Dr. Stiroh. My name's

5 Kara Kapke. I'm counsel for CVS and Rite Aid,

6 and I have a few questions for you about your

7 opinions regarding Dr. Conti's unjust enrichment

8 opinions with respect to retail pharmacies and

9 wholesalers.

10 Where does therapeutic value fit into

11 the unjust enrichment analysis?

12 A. My understanding of unjust enrichment

13 damages, as described in my report, are the

14 portion of a benefit conferred by a plaintiff on

15 a defendant which would be unjust for the

16 defendant to maintain.

17 The portion, then, that would be -- my

18 understanding of just for the plaintiff -- for

19 the defendant to retain would be the benefit

20 that the plaintiffs received from the

21 therapeutic benefits of the drugs.

22 Q. I want to ask you specifically now

23 about Dr. Conti's unjust enrichment calculations

24 with respect just to pharmacies.

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1 Do you recall having opinions about

2 those calculations?

3 A. I do.

4 Q. And after you wrote those opinions,

5 did you have a chance to read Dr. Conti's

6 deposition transcript where she was asked

7 questions about her unjust enrichment opinions

8 with respect to pharmacies?

9 A. I did.

10 Q. After reading her report and

11 deposition transcript, what's your understanding

12 of how Dr. Conti calculated unjust enrichment

13 damages with respect to pharmacies from a

14 mechanical perspective?

15 A. I understand that she summed up

16 certain revenues received by pharmacies, from

17 her report, which reads as if she had intended

18 then to subtract relevant costs.

19 From her deposition, it seems to me

20 from reading that she does not think there are

21 relevant costs, and so she -- my understanding

22 of her opinion is that it is simply revenues

23 received without subtracting costs and without

24 any apportionment with respect to what part

<p>Page 230</p> <p>1 might be just or any consideration of a 2 therapeutic benefit that patients received. 3 Q. From -- after reading her report and 4 deposition transcript, what's your primary 5 criticism for how Dr. Conti describes her 6 methodology for calculating profits for the 7 pharmacies? 8 A. I would say it is too simplistic and 9 incomplete. It was not apparent, from reading 10 her report, that her opinion was that it was 11 essentially revenues that she thought were 12 unjust enrichment. 13 From reading her deposition, it is 14 apparent that she thinks that there are certain 15 costs that she thinks are not relevant, that I 16 think would be relevant for calculating profits 17 even before any apportionment. 18 Q. Not asking you to give an exhaustive 19 list, but what are some of those costs that you, 20 as an economist, would consider in a profits 21 calculation? 22 A. I think often and first and foremost 23 it would be the cost of goods sold, is quite 24 often the biggest component of costs.</p> <p>Page 231</p> <p>1 There are typically other types of 2 costs that are associated with delivering a 3 product to consumers. They could be cost of 4 storing the product, delivering the product, 5 operating the facility, but I think there are a 6 wide variety of categories. None of the 7 categories are included in Dr. Conti's 8 calculation. 9 Q. For purposes about thinking about the 10 cost of goods sold, does it matter if a pharmacy 11 acquired and paid for the product the day it 12 sold it to the customer, a month before, or a 13 year before? 14 A. Not from a standpoint of economics, 15 no. 16 Q. Why not? 17 A. The profits that are received are the 18 part of the revenue that the retailer gets to 19 hold on to, putting aside the question of 20 apportionment. The retailer does not benefit 21 from the entirety of revenue. They have to then 22 use that revenue to pay out their costs, and 23 there would not be the entirety of revenue as a 24 profit calculation.</p>	<p>Page 232</p> <p>1 Q. As an economist, have you ever seen 2 profits calculated without including the cost of 3 ingredients? 4 A. Not profits for a pharmaceutical 5 product, no. 6 Q. Have you ever seen an economics 7 textbook or scholarly piece of literature, or 8 anything like that, where someone measures 9 profits from an economics perspective without 10 considering the cost of ingredients? 11 A. No. For the highest level with no 12 detail, to say that profits are revenue minus 13 cost, it still has cost. 14 As part of that definition, from an 15 accounting point of view, which when we are then 16 applying economic theory to an actual case, we 17 typically would look at accounting data, and 18 that would start with a cost of goods sold and 19 other costs of delivering the product to 20 consumers. 21 MS. KAPKE: Thank you so much, 22 Dr. Stiroh. I don't have any further 23 questions. 24 THE WITNESS: Thank you.</p> <p>Page 233</p> <p>1 MR. HONIK: Any questions from anyone 2 else? 3 MR. GOLDBERG: I may have a question 4 or two, but I do need to take just a 5 two-minute break. Sorry. If we can go off 6 the record for two minutes. 7 THE VIDEOGRAPHER: The time right now 8 is 4:35 p.m. We are off the record. 9 (A recess was taken from 4:35 to 10 4:39.) 11 THE VIDEOGRAPHER: Time right now is 12 4:39 p.m. We are back on the record. 13 MR. HONIK: So Ms. Kapke is done 14 questioning. Are there any other questions 15 from defense counsel? 16 Seth? 17 MR. GOLDBERG: No. There are no other 18 questions from defense counsel. 19 MR. HONIK: Was that Leslie in the 20 room? 21 MR. GOLDBERG: No one else is in the 22 room at this time. Just myself, Kara -- 23 MR. HONIK: When we were off the 24 record, was there someone else in the room?</p>
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1 MR. GOLDBERG: Leslie was in the room.  
 2 MS. KAPKE: She came in to talk to me.  
 3 MR. HONIK: Oh.  
 4 Okay.  
 5 EXAMINATION BY MR. HONIK:  
 6 Q. Dr. Stiroh, you were asked some  
 7 questions by Ms. Kapke, who represents CVS,  
 8 about the way in which profits were calculated  
 9 in an unjust enrichment model.  
 10 Are you aware that plaintiff sought  
 11 from the retailers the very costs that you  
 12 referred to, cost of goods, delivery cost,  
 13 storage, all the other items that you believe  
 14 might be incorporated in such a model, and --  
 15 and we were not provided that?  
 16 In fact, the court, to this point in  
 17 the litigation, has not directed the retailers  
 18 to provide that. Were you aware of that?  
 19 MS. KAPKE: Object to form. I think  
 20 that misstates the record.  
 21 But go ahead and answer.  
 22 A. I'm not aware of what costs were  
 23 requested. I have considered what Dr. Conti  
 24 said, and it was my understanding from reading

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1 her deposition that she had opined that  
 2 additional costs would not be relevant to the  
 3 calculation, and in my opinion, additional costs  
 4 would be relevant to the calculation.  
 5 Q. And if -- if those costs were  
 6 identified and produced in -- in the model that  
 7 you're talking about, you could subtract those  
 8 and arrive at your own calculation for profits.  
 9 Couldn't you?  
 10 A. Not for the purposes of assessing  
 11 damages that accrue from individual plaintiffs  
 12 and any benefit that they im- -- brought to an  
 13 individual defendant, the portion of which would  
 14 be unjust for that defendant to keep.  
 15 I think tracing the costs through the  
 16 complex supply chain would be something that  
 17 could not be done with broad accounting level  
 18 data.  
 19 I have not seen what model Dr. Conti  
 20 purports to put forward to assess profits and  
 21 how to trace payments through from the --  
 22 through the entire chain to assess what the  
 23 unjust portion of profits are for any part of  
 24 the chain or how they relate to specific

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1 benefits that come from specific plaintiffs.  
 2 But at a minimum, my understanding of  
 3 what she had set forward, the simplistic thing  
 4 that she put in her report, is not even what I  
 5 think she said in her deposition from what she  
 6 intended to do.  
 7 Q. Have you done an unjust enrichment  
 8 calculation for retailers?  
 9 A. I have not.  
 10 Q. So, you've done little more than  
 11 criticize what Dr. Conti did, but you've not  
 12 offered any other opinion about how to go about  
 13 it the right way, have you?  
 14 MS. KAPKE: Object to form.  
 15 Argumentative.  
 16 A. I have the critique in my report that  
 17 is summarized under Roman IX, and a section that  
 18 expands on that. I have not done a  
 19 quantification of unjust enrichment.  
 20 I have explained where I think there  
 21 are flaws in the overarching premise that  
 22 Dr. Conti puts forward, and the part that is  
 23 missing in my report is what she had said in her  
 24 deposition, where it seems that she thinks that

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1 there are not relevant costs that would need to  
 2 be considered.  
 3 I think there are relevant costs that  
 4 would need to be considered, and it would be  
 5 very complex to be able to take them into  
 6 account appropriately to assess unjust  
 7 enrichment in the manner in which I understand  
 8 unjust enrichment damages need to be assessed.  
 9 Q. So you've assessed unjust enrichment  
 10 damages in the past. Have you not?  
 11 MS. KAPKE: Object to form. Vague.  
 12 Ambiguous.  
 13 A. I have worked on matters involving  
 14 unjust enrichment damages. I don't recall in a  
 15 class action setting having done so.  
 16 Q. Such models exist, don't they, in the  
 17 economic world?  
 18 A. Unjust enrichment damages models exist  
 19 in the economic world, yes.  
 20 MR. HONIK: Thank you. Those are all  
 21 the questions I have.  
 22 MS. KAPKE: I don't have redirect.  
 23 MR. HONIK: All right. That concludes  
 24 the deposition. Thank you, Dr. Stiroh.

<p>Page 238</p> <p>1 THE WITNESS: Thank you. 2 THE VIDEOGRAPHER: The time right now 3 is 4:44 p.m. We are off the record. 4 (Time noted: 4:44 p.m.) 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p>	<p>Page 240</p> <p>1 CERTIFICATE 2 3 STATE OF NEW YORK )  ) Ss.: 4 COUNTY OF NEW YORK ) 5 6 I JEFFREY BENZ, a Certified Realtime 7 Reporter, Registered Merit Reporter and Notary 8 Public within and for the State of New York, do 9 hereby certify: 10 That the witness whose examination is 11 hereinbefore set forth was duly sworn by me and 12 that this transcript of such examination is a true 13 record of the testimony given by such witness. 14 I further certify that I am not related to 15 any of the parties to this action by blood or 16 marriage and that I am in no way interested in the 17 outcome of this matter. 18 IN WITNESS WHEREOF, I have hereunto set my 19 hand this _____ of _____, 2022. 20 21 _____ 22 JEFFREY BENZ, CRR, RMR 23 24</p>
<p>Page 239</p> <p>1 2 ACKNOWLEDGEMENT 3 STATE OF NEW YORK )  ) ss.: 4 COUNTY OF NEW YORK ) 5 6 I, LAUREN J. STIROH, Ph.D., hereby certify, I 7 have read the transcript of my testimony taken 8 under oath in my deposition of March 25, 2022; 9 that the transcript is a true, complete and 10 correct record of what was asked, answered and 11 said during this deposition, and that the answers 12 on the record as given by me are true and correct. 13 14 15 _____ 16 LAUREN J. STIROH, Ph.D. 17 Subscribed and sworn to 18 before me on this _____ day 19 of _____, 2022 20 21 _____ 22 NOTARY PUBLIC 23 24</p>	



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